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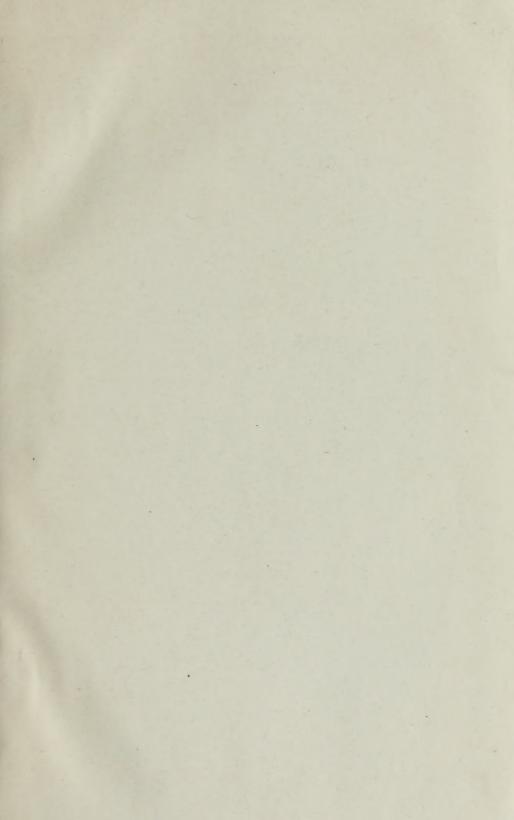
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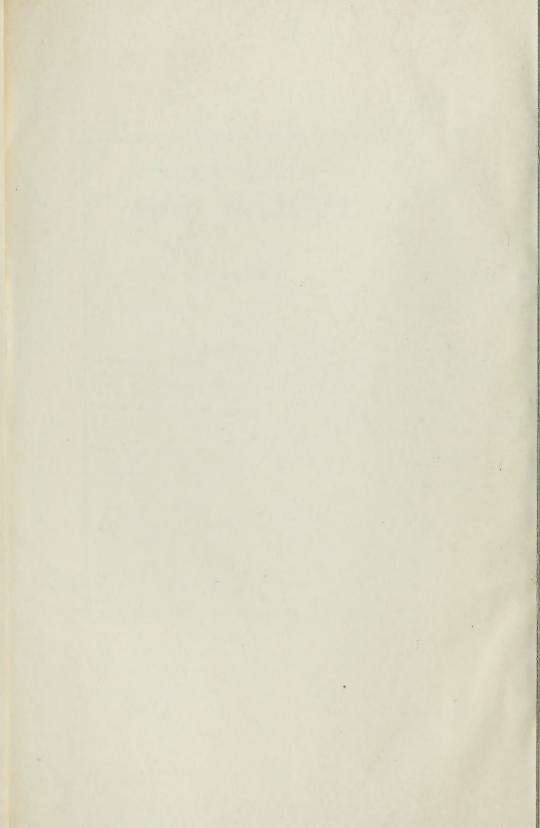
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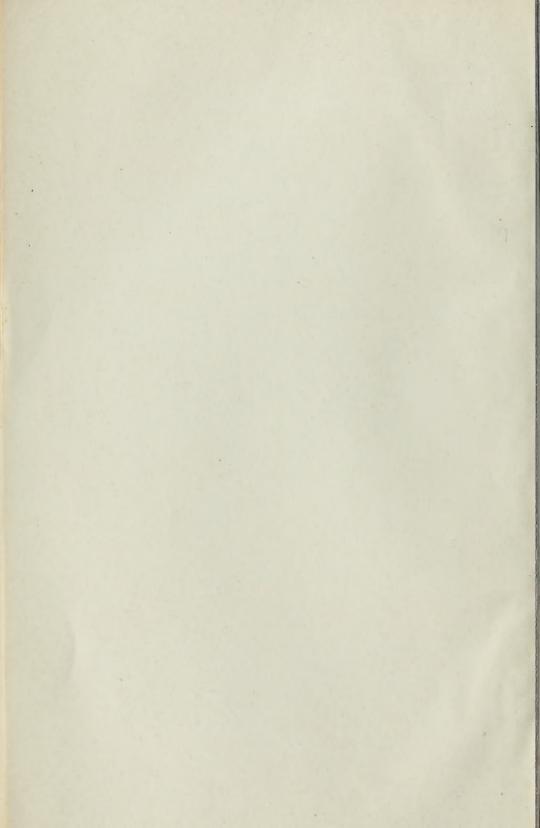
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United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

JAMES B. SMITH, F. C. MILLS and E. H. MAYER,

Plaintiffs in Error,

VS.

THE UNITED STATES OF AMERICA,

Defendant in Error.

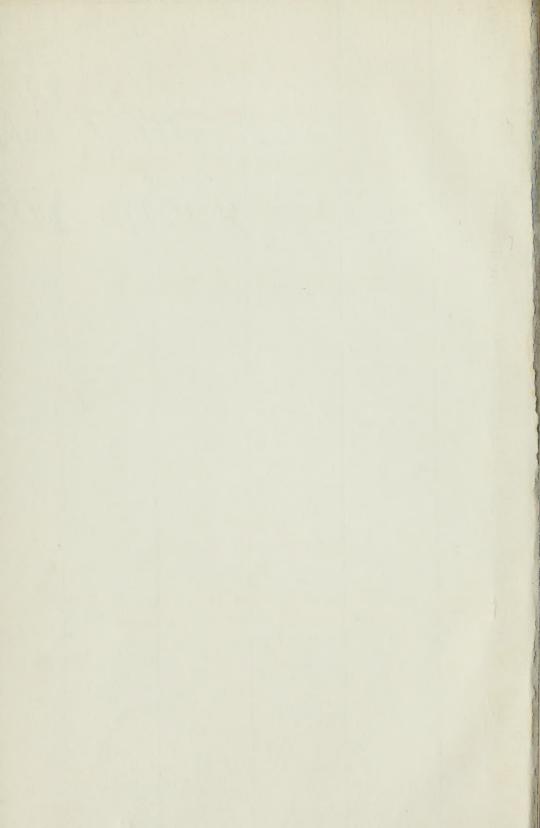
VOLUME III.

(Pages 737 to 1152, Inclusive.)

Upon Writ of Error to the United States District Court of the Northern District of California, First Division.



Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.



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Q. And Mr. Tidwell is what is known as the chief special agent for this division?

A. Chief treasury agent; yes, sir.

It was on September 10th, 1902, that I went to work as timekeeper for Mr. Mills. I am very positive about the date. Mr. Mills had contracts for trimming of coal with the Oriental & Occidental and the American & Hawaiian lines and with various tramp steamers. I noticed right away that while it was supposed to be the custom to weigh one bucket in every [647—591] fifteen, as a matter of fact that was not done. "A blind man could see that through spectacles." I became aware of it the first ew days I was there, and I noticed also immediately that when no weight was to be taken the buckets would go up only three-quarters full, whereas when the order "On the scales" was given, the bucket would be filled to overflowing. I think the business then belonged to John Rosenfeld Sons. The Western Fuel Company was not in existence. Mr. Mills and Mr. Mayer came around there though. I used, even before 1902, to see them robbing the transports when the other people had it. I used to be around the water-front when I was a little boy. Mills was down there before 1902. I was not on the barges as early as that time, however. The first time that I noticed the buckets on the barges was in 1902. Mr. Mills to my knowledge has been in the trimming business for perhaps twenty years. Mr. Mills was a particular friend of my father, and my father was associated with him in trimming the vessels. They were part-

ners, and had been almost as far back as I can remember Mr. Mills. My father and Mr. Mills were paid for their trimming by the ton as ascertained by the out-turn weight and the tons would be computed from the averaging of these rounds of weights which I have described to the jury. My father did the work, and Mr. Mills drew down the money. Mr. Mills paid me as timekeeper during those two years, 1902 to 1904. Mr. Mayer and Mr. Mills were also working for the Rosenfelds at this time. Rosenfelds used to have the contract for coaling these vessels prior to the time the Western Fuel Company was organized. They were operating some of the same barges that I mentioned as belonging to the Western Fuel Company. Among these were the "Corsair" and the "Ludlow." My father did the actual trimming during this time. [648— 5927

From 1904 to 1908 I worked both for Mr. Mills personally and for the Western Fuel Company. For the Western Fuel Company I had charge of the track of the Pacific Mail Steamship Company, and I did several jobs on the barges such as running the engine and taking the place of employees who might be sick. Sometimes I took the place of the hatchtender for a day or two. In addition to the eight men, who are allotted two to each bucket on those barges, there are also employed on the barge a man who runs the engine, a barge-tender or keeper, a foreman of the barge and a hatch-tender. When the barge is coaling a vessel the hatch-tender stands over

the hatch-directly over it. The signals for the hooking on of the tubs and the general operation of the buckets are given by the hatch-tender. When the custom-house weigher wants a round of buckets to go on the scales, the signal "On the scales" is given by the weigher himself or by the hatch-tender. The man standing in the hatch, in the daytime at least, would have to be blind not to see whether the buckets are or are not filled to the brim. Anybody standing at the hatch can see that perfectly plain. In that period, 1904 to 1908, I was myself very seldom hatch-tender. I was also not very often in this period a checker on the importation of coal. During that four years I worked at times along the waterfront for the Pacific Mail Steamship Company. I was paid by the Western Fuel Company by the day. The first time that I was ever regularly paid by the month was, I believe, in July, 1911. I cannot say how much time during that 1904 to 1908 period I was actually employed by the Western Fuel Company. Between the intervals of employment I would be doing nothing. When not acting as hatch-tender or weigher, I was probably in charge of the Pacific Mail Steamship Company's tracks, but I was only employed there [649-593] occasionally, just as I was only employed occasionally by the Western Fuel Company as hatch-tender or weigher.

When I was sent over by Mr. Mills to work for the Pacific Mail Steamship Company in 1908, as I have heretofore testified on direct examination, I was working for Mr. Mills and the Western Fuel

Company. I was checking and keeping time occasionally for Mr. Mills, and I was working around the barges and attending hatch sometimes for the Western Fuel Company. I only tended hatch a few times. There was no Pacific Mail dock at this time. I only weighed at the bunkers a few times during this period, that is in the period 1904 to 1908, before I was sent over to the Pacific Mail Steamship Company. Immediately before I was thus sent over "I was assisting, perhaps running the engine, or tending the hatch, or something else, or some other job."

- Q. You testified here that you only remained with the Pacific Mail Company about 30 or 60 days, or something like that, before you quit in disgust. That is your testimony, that that was about as early as 60 days. A. Yes.
- Q. Did you work only on the one occasion for the Pacific Mail Company as a checker?
 - A. No, many occasions.
 - Q. Sir? A. No.
- Q. Well, I mean, did you work for them only for this single period of 30 or 60 days, or however long its duration might have been?
 - A. I don't understand your question.
- Q. I will make myself clear. The question is not perhaps very clear. What I am trying to ask you is this, Mr. Powers, did you only work for the Pacific Mail Company one time, whether that time lasted for 30 or 60 days?
 - A. No, at different times. [650-594]
 - Q. How many different times?

- A. I don't remember.
- Q. What? A. I don't remember.
- Q. Well, can't you give us some idea with respect to that, as to whether it might have been half a dozen or more?

 A. I don't remember how many.
 - Q. Sir? A. I don't remember.
- Q. Can't you give us an idea as to whether it was half a dozen or twenty different times?
 - Q. You don't remember? A. No.
- Q. During what years, if you worked for them more than once, was it that you worked for them at odd times, for the Pacific Mail?
- A. About 1908 or 9, I really don't remember; I think about 1909, somewhere around there; I am not sure of it.
- Q. Do you mean by that answer that you worked there, according to your recollection, during odd intervals in 1908 and 1909?
- A. No, during either one of those years, I am not sure.
- Q. You testified here yesterday that you were working for the Fuel Company from 1904 to 1908?
 - A. Yes.
- Q. And that in 1908 you were turned over by Mr. Mills to the Mail dock? A. I was.
- Q. Well, wasn't it 1908, according to your recollection? A. I just told you I was not sure of it.
- Q. When was the 60-day period that you had reference to in answering Mr. Roche—I think you said 30 or 60 days?

- A. The time that Mr. Mills sent me over to the Pacific Mail Steamship Company, after the engineers complained about being robbed.
 - Q. About what year was that?
- A. I just told you I was not sure of it. I think it was 1908 or 1909, after the old Mail dock was dismantled, when they were at Pier 40 and 42. [651—595]
- Q. Had you worked for the Pacific Mail before that? A. No.
 - Q. That was the first occasion, then?
 - A. And the last.
 - Q. And the last? A. Yes.
- Q. Well, now, do you mean to be understood as testifying that you never worked for the Pacific Mail Company except upon that single occasion?
- A. I don't say the single occasion, no. I said 60 days, 30 or 60 days.
- Q. Now, do you mean to be understood that the only time you ever worked for the Pacific Mail was on this occasion, lasting from 30 to 60 days, or something in the neighborhood, the time that Mr. Mills sent you over?
- A. It was not only one occasion, I told you; I worked for them about 30 or 60 days, but it was not on one ship or one occasion.
- Q. I know, but that 30 or 60 days that you say that you worked for them, when Mr. Mills sent you over there, was that the only time that you ever did do work for them?

A. That was the only time I ever worked for the Pacific Mail.

The COURT.—We will take a recess until two P. M.

Cross-examination (Resumed).

Mr. MOORE.—Q. Mr. Powers, at the time of the adjournment, I was asking you about the length of your employment with the Pacific Mail Company, do you recall that? A. Yes.

- Q. Have you taken occasion to refresh your recollection with respect to that matter since adjournment? A. No.
- Q. Well, what is the fact, Mr. Powers, in regard to it? Is it the fact that you only worked there on one occasion for a space of from 30 to 60 days, or is it the fact that you worked there a great many different times? [652—596]

A. I worked there at different times.

The COURT.—That is the difficulty about that question, your idea of one occasion and the witness' idea of one occasion are very different things.

Mr. MOORE.—I am coming to it.

Q. Within what period were all these different times included?

A. I don't remember the times, the dates.

The COURT.—Q. Did you work for the Pacific Mail Company at any other time than during these 60 or 30 days that you have testified to?

A. No.

Mr. MOORE.—Q. Now, when was that 30 or 60 days?

Mr. ROCHE.—That question is objected to upon the ground that the same question has been repeatedly asked.

Mr. MOORE.—I want to see, if we have got it to 30 or 60 days, whether it was in 1908 or 1909, if he can testify to it. He testified yesterday it was in 1908.

The COURT.—So he did. To-day he said he could not determine whether it was 1908 or 1909.

Mr. MOORE.—Q. You testified here yesterday that from 1904 to 1908 you were working for the Fuel Company and continuing the work for Mr. Mills, as you put it, as a timekeeper, in connection with the trimming, as well, did you not? A. Yes.

Q. And you testified that in 1908 Mills sent you over to the Pacific Mail dock, did you not?

- A. About 1908, yes.
- Q. Did you say about 1908, or in 1908?
- A. About 1908 or 1909.
- Q. Well, what was your testimony when you were examined with respect to that matter yesterday, according to your recollection, as to whether you said 1908 or about 1908, or 1908 or 1909?
- A. It was about 1908, if I remember right. [653—597]
 - Q. That is what you recall having testified to, is it?
 - A. Yes.
- Q. And now you are unable to say whether it was in 1908 or 1909. What part of the year was it, which ever it might have been?
 - A. It might have been—my recollection is it would

(Testimony of David G. Powers.) have been about the end of 1908 or 1909, between there—or the beginning of 1909.

- Q. You say about the end of 1908 or the end of 1909, or between there? A. Between there.
 - Q. What do you mean by that?

Mr. ROCHE.—That question is objected to upon the ground that the meaning is quite apparent.

Mr. MOORE.—We will take a ruling.

The COURT.—The objection is overruled.

A. I mean it might have been at the end of 1908 and the beginning of 1909.

Mr. MOORE.—Q. Now, isn't it the fact, Mr. Powers, that instead of from 30 to 60 days, you worked on and off for the Pacific Mail as a checker for over a year?

A. Not that I remember, no.

- Q. Well, for at least an entire year, on and off?
- A. I told you I worked for the Pacific Mail Company altogether somewhere around 30 or 60 days, between 1908 and 1909, at different times.
- Q. Well, now, the question is, Mr. Powers, if you will answer it, is it not the fact that you worked off and on for that company throughout an entire year?
 - A. I don't remember.
- Q. Well, what, according to your recollection, would be the limit of the period, each end of the period, so to speak, within which you worked at different times for the Pacific Mail?
- A. Well, perhaps it might be two or three days or perhaps four [654—598] days, on an average.
- Q. Well, the proposition is this, Mr. Powers, if you commenced to work for them to-morrow, the first

time, how many months after to-morrow would it have been, according to your recollection, corresponding to the last time that you had ever worked for them. I want to know the general running space of time that that whole business covered?

- A. Well, I really don't remember.
- Q. What is your best recollection about it, if you have any? A. I have not any.
- Q. Then, are you unable to say that it is not the fact that off and on, at different times, you worked for them throughout an entire year?
 - A. I could not say as to that.
- Q. When was it, with respect to the first time that you ever went to work for them, that you claim you had this conversation with Mr. Chisholm?
 - A. At the time that Mr. Mills sent me over there.
- Q. Well, then, the time that you protested was on the very first occasion that you went to work for them? A. Yes.
- Q. Well, then, you quit in disgust, after that, did you?
- A. I did not; I stayed there a while and I quit afterwards.
- Q. How long after you had that conversation with Mr. Chisholm did you quit working for the Pacific Mail upon the last occasion that ever you worked for them?

 A. I don't remember.
- Q. Well, you said something here yesterday about working for 30 or 60 days, and quitting in disgust, didn't you? A. Yes.
 - Q. Now, you say, to-day, that this conversation that

you then related as having been had with Mr. Chisholm, took place very [655—599] shortly after you first went to work for them on the first occasion, did you not? A. Yes.

- Q. Well, now, how long after that, whenever it was, was it that you quit in this disgust?
 - A. I don't remember.
- Q. Didn't you work for them on and off after that for an entire year? A. I don't remember.
 - Q. You don't remember? A. No.
- Q. Have you any idea with respect to that? Can you approximate the extent of time that elapsed between this conversation that you claim you had with Mr. Chisholm and the date upon which you quit in disgust? A. No.
- Q. Now, how shortly after you were sent over there by Mr. Mills upon this very first occasion, was it that you had this conversation with Mr. Chisholm?
- A. Well, the first part that I went over there, I went right to Chisholm's office.
- Q. Then it was with respect to that very first barge, was it, in connection with which you were called upon to work? A. Yes.

The checker's duties on the barge are to see that the tubs are full, and that they take weights once in every fifteen tubs, or 60 tubs. It is not the checker, but the United States Government weigher, who has the authority to say when a tub shall be weighed; and if the tub be filled to overflowing, he has the right and privilege to say "We shall not weigh this." He can accept or reject any tubs that he

pleases. When I guit the Pacific Mail Steamship Company the Western Fuel Company sent for me. Mr. Mills sent for me and reminded me again because I made several kicks during that time. We ran the barge short. You will find it if you look up the record, the barge "Nanaimo." He sent to see me about a barge that had run short, according to his statement. I did not ask him for a job. Mr. Mills then employed me as a hatch-tender. It is the duty of the hatch-tender to stand right over the hatch, and practically be the foreman of the barge when the barge is coaling the vessel. [656-600] The shovelers are down below in the hold. Sometimes I would give the signal "On the scales," but usually Mr. Edward J. Smith would do that. shortly after I quit the Pacific Mail Company that Mr. Mills gave me a job as a hatch-tender. It might have been a month or two or three months thereaftr. It was not, therefore, immediately. I don't believe that it was as long as six months. It was about the year 1909. It was in the year that I left the Pacific Mail Steamship Company. I am unable to say as to whether I left that company in 1909, or 1908, 1910. I am not sure. It must have been 1910 or so. I continued to be employed as a hatch-tender until July, 1911. I was working as hatch-tender for about a year and a half prior thereto.

Q. Now, you testified here yesterday, your testimony was divided into certain periods, like 1902 to 1904, you were timekeeper, as you put it, to Mr. Mills, and 1904 to 1908 you were hatch-tender at times,

(Testimony of David G. Powers.)
running the engine at times, looking out for the mail
track at times, and weighing on some occasions. You
remember that?

A. Yes.

- Q. Then, in 1908, you went to work for 30 or 60 days for the Pacific Mail, and then you came back to the Western Fuel Company and stayed in the capacity of hatch-tender until July, 1911, and after that you became assistant superintendent. Now, I want to ask you the question if it was not until July, 1910, that you were employed on this last occasion as a hatch-tender, what had you been doing between 1908 and 1910?
- A. I was working from 1908 to 1910, as I told you, for the Western Fuel Company at various positions; I worked as hatch-tender and other positions for them. [657—601]
- Q. Did you work in the period there from 1904 to 1910 in these various positions, or was it from 1904 to 1908?
- A. I worked in various positions all through, until the time I became assistant to Mr. Mills, the superintendent, that was in 1911, July, 1911.
- Q. Well, your recollection is that you worked, now, as I understand you, as hatch-tender prior to that date, in July, 1911, about a year, or a year and a half; is that correct? A. Yes.
- Q. Might it have been two years or two and a half years? A. No, it was not that long.
- Q. Well, then, was it not 1910, instead of 1908, that you worked last for the Pacific Mail?
 - A. I am not sure of the date.

Q. Do you mean to be understood as testifying you don't remember whether it was 1908 or 1909 or 1910 that you worked the last time for them?

A. I told you I thought it was between 1909 and 1910, but I would not swear to it. You have the records there that will show.

I was hatch-tender on all the barges, that is for this year and a half. I was not assigned to any particular barge. When I was working for the Pacific Mail Steamship Company they were trimming their own coal. When I left the Pacific Mail Steamship Company for the last time they were still trimming their own coal. Subsequently to that Mr. Mills and my father secured the contract for this trimming. The compensation for the trimming of this coal, as done by my father and Mr. Mills, was based upon the out-turn weights of the barges. Mr. Mills and my father had the contract for this trimming during the period for a year and a half when [658—602] I went back to work for the Western Fuel Company and was given a job as hatch-tender. I do not remember exactly how long it was after I began to be hatch-tender that they got this contract; it was perhaps a year. At any rate they lost the contract in December, 1911, which was the date I gave yesterday when I left the employ of the Western Fuel Company for the last time.

Q. And what were the circumstances of your leaving upon that occasion?

A. At the time I got into a little trouble and I left the Western Fuel Company's employ. I got into (Testimony of David G. Powers.) trouble and I went down there and asked for my money and I stopped working for them.

- Q. Sir? A. I got into trouble.
- Q. What was the date that you got into what you term this little trouble? A. December 13th.
 - Q. It was the 13th of the month?
 - A. Of December.
- Q. And without going into that at very great length, Mr. Powers, you had the barge "Melrose" lying alongside the "Siberia" between the "Siberia" and the dock, on a Sunday night, did you not?

Mr. ROCHE.—Just one minute. That is objected to as being immaterial.

Mr. STANLEY MOORE.—Your Honor, it goes to the circumstances of his leaving the company. I have no desire to exploit the matter in and of itself, but I think the facts surrounding that should be brought out inasmuch as this witness stands in the relation that he does to this entire subject matter, and inasmuch as we have permitted him to be so freely examined upon direct examination with respect to leaving the Pacific Mail, the conversations with Mr. Chisholm, and the like, we think that we should be allowed to go into this matter. [659—603] And the matter that I was warned would happen when I would undertake his cross-examination on this point, if your Honor please, has already transpired.

Mr. ROCHE.—Now, I will withdraw the objection and you can go right ahead.

Mr. STANLEY MOORE.—We may have to wait

(Testimony of David G. Powers.) for the witness to compose himself.

- Q. Mr. Powers, on the night that you got—well, I will temporarily leave that, your Honor, just for a little while. In December, 1913, the early part of that month, or rather, I should say 1911, who was the barge-tender of the "Melrose"? A. Mr. Feedler.
 - Q. Of the "Melrose"?
- A. I have forgotten his name; Christensen, I believe.
 - Q. Was it John Supple?
 - A. No, I believe it was Mr. Christensen.
- Q. I don't want to embarass you, Mr. Powers, but was it not the "Melrose" that was lying alongside of the "Siberia" on that occasion? A. Yes, sir.
- Q. Now, going back in your recollection, Mr. Powers, who was the barge-tender?
 - A. Mr. Christensen.
- Q. Not on that very day, I don't mean, but up to about a week before? A. Mr. Christensen.
- Q. Don't you remember a man by the name of Supple being barge-tender there? A. No, sir.
 - Q. What was Christensen's first name?
 - A. I don't remember his first name.
 - Q. What are the duties of a barge-tender?
- A. A barge-tender is supposed to take charge of the barge.
- Q. What are his duties with respect to remaining on board the [660—604] barge at night?
- A. It was always my duty—it was always my opinion, if I was in charge of a barge and I was there, I would give a man a little recreation after he had

(Testimony of David G. Powers.) done a hard day's work.

- Q. What did the barge-tender do during the day?
- A. He had charge of the barge, shifting it around, staying up all night sometimes and getting no overtime for it.
- Q. When a barge was alongside a vessel coaling during the entire day, what would be the barge-tender be doing?
- A. He would be cleaning up his barge and working around and taking charge of it.
- Q. Generally speaking, his duties included that of keeper or watchman, did they not? A. Yes, sir.
- Q. Now, about a week before this trouble occurred, Mr. Powers, do you recall putting in a complaint with Mr. Mills, making an accusation with Mr. Mills in regard to the barge-tender of the "Melrose"?
- A. Not a week before, but about three weeks or a month before.
- Q. Your recollection is that it was about three weeks or a month before? A. Yes, sir.
 - Q. Are you clear on that? A. Yes, sir.
 - Q. Is it not a fact that it was within a week?
 - A. No, sir.
 - Q. What was that accusation that you made?
 - A. I told Mr. Mills about me finding opium aboard.
- Q. And you accused that man of putting it there, did you not?
 - A. I caught the man with the opium.
 - Q. Was the barge searched afterwards for opium?
 - A. It was.
 - Q. Was there opium found?

A. There was not, I gave the man a chance to throw it away.

Q. What did Mr. Mills do to the man? [661—605] Mr. ROCHE.—Just a minute. That is objected to, if your Honor please, as not proper cross-examination.

Mr. STANLEY MOORE.—I want to show, if your Honor please, that right before this trouble occurred this witness went to Mr. Mills with respect to the watchman of that barge and got him discharged on an accusation that the bargeman had permitted opium to come on board the boat; that on this Sunday night, without any keeper or tender of the barge in the employ of the company, with the man out of the way, they put the barge alongside of this steamer to have the coast clear for the opium to be lowered down, and that Mr. Mills discharged the man on his accusation.

Mr. ROCHE.—Well, I will withdraw the objection; go right ahead.

Mr. STANLEY MOORE.—Q. What did Mr. Mills do in view of your accusation?

A. Mr. Mills discharged the man.

Q. Did anybody ever see that opium that you say you gave the man a chance to throw away, besides yourself?

A. Yes, sir, Mr. Smith over there saw it. He was weighing the coal. He saw it thrown on the deck. Ed Smith did. Edward J. Smith saw the opium thrown on the deck from the "Persia," or one of those boats, the English boats, the small ones.

Q. And that was this matter as to which this man

was discharged, was it? A. Yes, sir, it was.

- Q. Did anybody else see it, outside of a defendant in this case? A. Yes, sir, my father saw it.
 - Q. Your father saw it? A. Yes, sir.
 - Q. Did anybody else see it?
- A. The hatch-tender—no, not the hatch-tender, but the barge-man, saw it; he had it, he put it in back of the cabin. [662—606]
 - Q. Who was the barge-man?
- A. I don't know his name, I can get him if you want me to.
 - Q. It was Mr. Supple, was it not?
- A. Yes—I don't know his name; it may have been. Mr. Feedler will tell you all about it.
 - Q. Did anybody else see it besides them?
- A. I told you that Mr. Smith saw it thrown aboard the barge by Goosey.
- Q. You say Mr. Smith saw it; you say your father saw it; you say you saw it; you say the barge-tender saw it? A. Yes, sir.
 - Q. Did anybody else see it?
 - A. Feedler knows about it.
 - Q. Who is Feedler?
- A. Emil Feedler, a former barge-tender of the Western Fuel Company.
- Q. Who was it that received the opium that was lowered on the "Melrose" on the Sunday night that you got into trouble, besides yourself?
 - A. I don't know about a Sunday night.
- Q. Well, whatever night it was, we won't quarrel about that; who was it?

 A. Emil Feedler.
 - Q. It was this same Emil Feedler, was it?

- A. Yes, sir.
- Q. And he had joined in the complaint with you as the result of which that man was fired?
 - A. Yes—wait a moment, I didn't get that.
- Q. I say Feedler had complained about the man too, had he not?
- A. Feedler had never complained about the man; he is a particular friend of the man.
- Q. Feedler had seen the opium, as the result of which you made this accusation and this man was discharged?
- A. Feedler had not saw the opium; he knew about it afterwards. [663—607]
- Q. I thought you testified here a few moments ago when I asked you who saw it, you said the defendant, Ed Smith saw it; you said your father saw it; you said the barge-tender himself saw it, and I thought you meant to be understood as testifying also that this same Emil Feedler had seen it?
- A. Knows about it, and is a particular friend of this barge-man, or was.
- Q. Did you, or not, mean to be understood as testifying in regard to these various parties here, that they had seen it or knew about it, whatever you may consider that to mean?
- A. When I said that Mr. Ed J. Smith saw it thrown on the deck by Goosey, the fellow on the "Persia" or the "Asia," I don't know which one it was, they are both sister ships, and I testified also that my father saw it thrown aboard.
 - Q. Feedler did not see it?
 - A. He did not see it.

- Q. But he knows about it?
- A. He knows about it, yes, sir.
- Q. And it was Feedler who was with you on this night, and who went across the bay?
 - A. It was, yes, sir.
- Q. And was walking up the streets of Oakland with you with the sacks when you were arrested?
 - A. Yes, sir.
- Q. Feedler was an employee of the company too, was he not? A. Yes, sir.
 - Q. On what barge was he employed?
 - A. On the barge "Wellington."
- Q. And within three weeks of the time that you and Feedler got this opium off the "Siberia" and hired a Crowley launch and took the skiff of the "Wellington" and brought it across the bay and started up town with it you had the barge-tender of that barge discharged on an accusation as having received opium?
- A. I reported it to Mr. Mills and he was discharged. [664—608]
- Q. You know that Mr. Mills discharged him on your report, do you? A. Yes, sir.
- Q. Was there any hatch-tender on the "Melrose" that night?
- A. That night—I don't understand you, what night?
- Q. Was there any hatch-tender on the night that you and Feedler had her alongside the "Siberia"?
 - A. They were not discharging the barge that night.
 - Q. The hatch-tender is supposed to be on the barge

when she has coal on her and is in the stream or is alongside a dock, whether they are discharging or not—I should have said the barge-tender?

- A. Mr. Moore, I told you that when I was in charge, during the time I was in charge assisting Mr. Mills, I did not expect any man to work day and night, that he could go out and have a little recreation, that he could go to the theater, or wherever he wanted to go; I didn't think that a man was a dog.
- Q. When the barges are lying alongside the vessels, I want to ask you again, Mr. Powers, just what would the barge-tender do during the day while the barge was lying there coaling the vessel?
- A. He would clean up the barge, he would take charge of it and look around. He would have to keep up his steam. He would have to be up before 6 o'clock in the morning to have his steam up for the engineers, and he would have to bank the fire up at night, and sometimes he would have to stay up all night to have his barge ready during the day.
- Q. An engineer is working there running the hoist, is he not? A. Yes, sir.
- Q. When they are coaling a vessel during the day what part of the barge is there for him to clean up?
 - A. The decks.
- Q. Is there very much deck-room to those vessels? [665—609]
- A. Some of them are pretty large; some of them carry 1800 tons.
 - Q. Are they all decked over?
 - A. Some of them are pretty wide; they have

(Testimony of David G. Powers.) hatches in them, you know.

- Q. How wide are some of them?
- A. Four feet wide, each side.
- Q. How often does a barge-tender clean up during the day when you are coaling that way?
 - A. I never stopped there to watch them.
 - Q. Do they do it at all?
- A. Certainly they do it. And they have to paint up the cabin, and they have to splice the ropes; they have lots of work to do.
 - Q. Do they sweep the decks?
 - A. Why certainly they sweep the decks.
 - Q. Use a broom, do they, and sweep up the coal?
 - A. Certainly.
 - Q. Outside of sweeping the deck, what does he do?
- A. I told you he had to splice his ropes; sometimes they shift a barge three or four or five times during the day. And he would have to get his steam up before 7 o'clock in the morning.
- Q. Sometimes those barges are alongside a ship for a number of days, are they not? A. Yes, sir.
- Q. And it is a pretty dirty place around there, is it not, according to what you say about the custom-house officers? A. It is.
- Q. Do you mean to say they keep those barges tidy and clean? A. They do.
 - Q. Where does the barge-tender stay at night?
 - A. Do you mean when the barge is not working?
 - Q. When the barge is coaling, or is in the stream,

(Testimony of David G. Powers.)
or is [666—610] alongside of a mail boat or a
steamer?

A. Do you mean when the barge is lying alongside of a steamer?

Q. You can take it either way.

A. When the barge is discharging into a steamer the barge-man has to be there all night, the same as he is all day, and receives no overtime for it.

Q. Is it not his duty, where a barge is lying alongside of a steamer loaded with coal, to remain on that barge at night, whether the barge is discharging coal into the steamer during the night, or not?

A. I answered you before, Mr. Moore, I told you that while I was there—and I will go a little stronger than that and say that while my brother was in charge 3 or 4 years before I was, we never expected a man to work night and day. A man worked a good day's work when he got up at 6 o'clock in the morning and worked all day and then banked his fire at 6 or 7 o'clock at night.

Q. Where did he sleep during the night?

A. He slept aboard the barge.

Q. He slept aboard the barge whether there was coal actually being taken out of the barge, or not, did he, under those circumstances? A. Yes, sir.

Q. When was it with reference to the time that you got into this little trouble, and after you had made that accusation against that other man, that your father lost the trimming contract?

A. Oh, he lost the trimming, and also Mr. Mills-

Q. (Intg.) Your father and Mr. Mills, yes, I

(Testimony of David G. Powers.)
want to put that in too—when was it they lost that
contract? A. After I got into trouble.

- Q. After you got into trouble? A. Yes, sir.
- Q. It was immediately afterward, was it not?
- A. I believe so, yes, sir. [667—611]
- Q. Since that time you have felt very bitter against the Western Fuel Company, have you not?
 - A. No, sir, not a bit.
- Q. Have you ever said that you were going to get even with any of them? A. I did not.
- Q. You never have made that statement, for example, with respect to Mr. J. B. Smith?
 - A. I did not.
 - Q. At any time? A. No, sir.
 - Q. You never said you were going to get them?
 - A. No, sir.
- Q. You never have said that you were going to get any of these defendants, have you?
- A. No, sir. Why, Mr. Mills is a particular friend of my father; in fact, he is up to his heels in debt to him—

Mr. ROCHE.—Well, never mind about that.

Mr. STANLEY MOORE.—That is another instance of his volunteering matters, your Honor, that we feel we ought to go into.

The COURT.—Just answer the questions that are asked you, Mr. Powers, and you will get along much better and much quicker.

Mr. STANLEY MOORE.—Q. Since this trial has been going on, have you had anything to say to Mr.

Mayer, for instance, the gentleman sitting over there?

- A. One day I met him outside the door, the day you had me arrested, and he started to blow at me with his mouth, to make noises with his mouth, and I told him not to make noises with his mouth but to put up his fists; that was all.
 - Q. In whose company was he at that time?
- A. I don't know; Mr. Howard came out behind him.
 - Q. In whose company were you?
 - A. The detective was waiting for me. [668—612]
- Q. Did you speak to him first or did he speak to you first, or did he make a sign first, or did you make a sign first?
- Mr. ROCHE.—You are talking now about the arrest the other day, are you?

Mr. STANLEY MOORE.—Yes, I am talking about the encounter between himself and Mr. Mayer.

Mr. ROCHE.—It was a verbal encounter on the part of Mr. Mayer and a fistic encounter evidently on the part of Mr. Powers.

Mr. STANLEY MOORE.—Well, we will see. I know what his first version of that is; I want to know what the last chapter of it will be.

A. (Continuing.) Mr. Mayer started to make noises with his mouth, while the detective was waiting for me, and I told him to shut up his mouth and put up his fists if he had anything to say or do.

Mr. ROCHE.—Q. And what became of the defendant Mayer then?

A. He sneaked behind Mr. Howard.

Mr. STANLEY MOORE.—Q. Mayer started it, did he? A. Yes, sir.

- Q. And you testify to that positively, do you?
- A. Yes.
- Q. It is not the fact that without his having made any recognition or other sign to you you called him a dirty Jew and told him you were going to get him; that is not the fact, is it?
 - A. No, it is not the fact.
- Q. Do you remember a man by the name of Desmond, John Desmond, who used to work with you in the Union Iron Works, or whatever iron works that was—the Risdon? A. Yes, sir, I remember him.
- Q. He is a tubman now in the employ of the Western Fuel [669—613] Company?
 - A. Yes; he has been there for years.
 - Q. You have known him a long time, have you?
 - A. Yes, sir.
- Q. Did you ever meet him, since this trouble came up? A. Yes, I have.
- Q. Did you ever have any conversation with him in which you said anything about Mayer?
 - A. I never mentioned anything about Mayer.
- Q. Did you meet him, in the last part of last year, on the street?
- A. I told you I met him, but I don't remember the date.
- Q. Do you remember meeting him in June of last year, on the street, and saying, "I am going to get that Jew, Mayer?" A. I did not.

- Q. You said nothing of that kind? A. No.
- Q. Do you know a man by the name of John Linehan, who also works for the Western Fuel Company? A. I do.
 - Q. Have you ever stopped and talked with him?
 - A. Not that I remember of, no, sir.
 - Q. You don't remember that? A. No, sir.
- Q. Do you remember meeting him at any time since this trouble commenced? A. No, sir.
- Q. Do you ever remember saying, "How is that Jew blankety-blank"?
- A. I could not say it when I don't remember meeting him.
 - Q. Do you say you did not say that to him?
 - A. Certainly, I did not say it.
- Q. And did you also say to him, "I am going to make him sweat"? A. I did not.
- Q. Either in those precise words or in substance that? A. I did not.
- Q. Do you know a man by the name of Frank Foran, a man whom you knew while you were in the employ of the company? [670—614]
 - A. You mean Frank Foran of the office?
 - Q. Yes; did you ever talk to him about this matter?
- A. I never saw Mr. Foran excepting one time when he would not talk to me, on Kearny street, since this indictment.
 - Q. Did you ever meet him in a candy-store here?
- A. Yes, I met him in a candy-store at the time the Elks went away; it was down at the Ferry; they went to Portland.

- Q. When was that?
- A. I should judge that was about two years ago.
- Q. Was it since these troubles started?
- A. Before the trouble started.
- Q. Was it after you came over here again? You spoke about Mr. Ed Smith being released from Folsom; I am not going to dwell on this, but it was after you came out of the County Jail, was it?
 - A. Yes, sir.
- Q. Do you recall saying anything to Mr. Foran about the case?
- A. I never said anything; how could I say anything? That was before the case ever came up.
- Q. Did you say anything to the effect that you were going to fix any body? A. I did not.
- Q. You never said that you were going to fix Mr. Smith? A. No, sir.
 - Q. I mean J. B. Smith? A. No, sir.
 - Q. Or that, in substance? A. No, sir.
- Q. Is it not a fact that instead of being a friend of Mayer's that you and he never have been friends?
- A. We have always been friends. I was up on the track talking to Mayer after I was released from the County Jail. He was shaking my hand; I was talking with him.
- Q. Do you mean to say that you and Mayer have always been [671—615] good friends?
 - A. Always been good friends.
 - Q. You have always been good friends?
 - A. Yes, sir.
 - Q. When was it you were up on the bunkers after

(Testimony of David G. Powers.) you were released from the County Jail?

A. Shortly after I was released from the County Jail; I don't know the exact date; I dropped up to see Mayer.

Q. About what was the date you came out?

A. I came out on the 2d of July and I was up there only a few days afterward. * * *

Mr. STANLEY MOORE.—Q. On how many occasions were you up on the bunkers after you came out of the County Jail? A. Once.

Q. When was it, Mr. Powers, that you first talked with Mr. Tidwell respecting these matters?

A. Sometime I believe, in August, 1911, I believe, or 1912.

Q. Do you recall in what particular portion of August, 1912, that was? A. No, sir.

Q. Was it in the first part or the last part of August, according to your recollection?

A. I don't remember the exact date.

Q. How long after your first meeting with him was anything said betwen you and him as to his giving you or obtaining for you a job or position?

A. I don't remember the exact date. I know that Mr. Tidwell put me to work shortly afterward, shortly after I was talking to him.

Q. How shortly after you had the talk with him—not a matter of days I don't mean, but you can fix it by saying how many weeks after you first had the talk with him was it that he put you to work?

A. It may be a week or two; I am not sure. [672—616]

- Q. That is according to your best recollection?
- A. Yes, sir.
- Q. And when he put you to work you were put on the pay-roll, were you? A. Yes, sir.
- Q. And in the capacity of a customs agent, I think you call it? A. Yes, sir.
- Q. Was there anything said about his giving you that position prior to the time that he actually gave it to you?
- A. Well, there was nothing said about giving me the position; he was going to look it up.
- Q. What do you mean by saying he was going to look it up?
- A. I suppose he was going to think over the facts and figures and the dates and different statements I made to him.
 - Q. Did you make some proposition to him?
- A. In what way—I don't understand your question.
- Q. You say he was going to think it over and look up the facts and figures that you had given him, and so I ask you had you made some proposition to him?
- A. I made no proposition. The only thing was I told Mr. Tidwell about these people.
- Q. Why was it he was to think it over with regard to giving you a position, if that is why he was to think it over?
- A. I don't know; Mr. Tidwell can answer that better than I can.
 - Q. Was anything said about a position at the time?
- A. I was to be employed as a customs agent; that was about all.

- Q. What was said about that, Mr. Powers? That is your conclusion that you were to be employed as a customs agent; I am asking you now what was said.
 - A. About what?
- Q. To the effect that you were to be employed as a customs [673—617] agent?
- A. Oh, Mr. Tidwell just said that he would think it over and look it over and that I was to be employed as a customs agent.
 - Q. For how long? A. For a period of 90 days.
 - Q. Was that mentioned at that time?
 - A. It was.
- Q. Was anything said as to what, if anything, was to be done in regard to employing you after that?
 - A. He never made any special promises.
- Q. He never made any special promises; what do you mean by that?
- A. Well, he never came right out and made any promise to me, or anything of that kind.
- Q. You say he never came right out and made any promise; what did he say?
- A. I just told you that Mr. Tidwell said he would look into the facts and that I was to be employed as a customs agent, but he didn't make any other promise.
- Q. What proposition, or what, if anything, did you say to him about being employed as a customs agent?
- A. Nothing. I told Mr. Tidwell about these people you are defending.
 - Q. What, if anything, did you say to him after

(Testimony of David G. Powers.) you told him about these people that are the defendants here in regard to being employed?

- A. I never said much; I don't remember of saying anything to him afterwards.
- Q. How did he come to say to you that he would think it over about employing you as a customs agent?
- A. Well, I don't know what Mr. Tidwell had in his head.
- Q. I understand that, Mr. Powers, but you know what you had in your head; did you express anything to him as being in your mind in regard to being employed as a customs agent in response to which Tidwell said he would think it over? [674—618]
 - A. No, I never spoke to him.
- Q. Do you mean to say you did not make any proposition of that kind to him? A. I did not.
- Q. You say he never has come right out and promised anything in regard to the length of time that you were to be employed; how long did you figure that you were going to be employed by the Government with respect to the trial of these cases?
- A. Oh, I figured that the Government would give me the square deal.
 - Q. What do you mean by the square deal?
- A. That when I showed them something they would give me a chance to make good.
- Q. What do you mean by "a chance to make good"? A. To make a living.
- Q. You figured that you would be regularly employed, do you mean? A. Yes, sir.

- Q. You would become a permanent official of the Government? A. Yes, sir.
- Q. Then you did have something in your mind about getting a job, did you not?
- A. Well, I thought they might, but that was not my reason for telling him.
- Q. Well, without regard to what your reason was, you did think that they might give you a job?
 - A. Yes, sir.
- Q. And you thought it ought to be a permanent job? A. Yes, sir.
- Q. None of those 90-day propositions; is that right? A. Yes, sir.
- Q. You thought that instead of the 90-day proposition they ought to change it into a permanent proposition, did you not? A. Yes, sir. [675—619]
- Q. You say that Mr. Tidwell did not come right out and promise you that; did you ask him for a permanent job? A. I did not.
 - Q. You did not? A. No, sir.
- Q. You were angry with him were you not, when you found out he was not going to continue you permanently in the employ?
 - A. I was not, no, sir.
 - Q. You were not?
 - A. No, sir. He is not running the Government.
 - Q. Sir.
- A. He was not running the United States Government.
- Q. Who was it you were angry with in the Government, if anybody? A. Nobody.

- Q. Did Mr. Tidwell state to you that he was trying to keep you continued on? A. No, sir.
- Q. Well, you were disappointed then—we will put it that way—when you found that the job was not going to last indefinitely, were you not?
 - A. Well, I would not say I was disappointed.
 - Q. It had lasted a year, had it not? A. Yes, sir.
- Q. Outside of this business of your father and Mr. Mills, had you ever worked steadily on a regular salary for anybody, corporation or individual, in your life, for the continuous space of a year before you got this job as Special Agent which lasted from August, 1912, to August, 1913?
 - A. No, only the Western Fuel Company.
- Q. Were you ever on a regular monthly salary with them for as long as a year? A. No, sir.
- Q. This was the first time, was it not, that you had been in a job on a regular monthly salary for a year?
 - A. Yes, sir. [676—620]
- Q. Did Mr. Tidwell say anything to you in that conversation in regard to opium? A. Yes, sir.
- Q. What was the first thing that you did in your employment that Mr. Tidwell gave to you after thinking the matter over?

Mr. ROCHE.—One moment; that is objected to as being immaterial.

The COURT.—It seems so.

Mr. STANLEY MOORE.—Very well, your Honor, we note an exception.

Q. Don't answer this question until the Court rules upon it. You mentioned to Mr. Tidwell be-

sides this Western Fuel business also things in regard to opium, did you not, when he had this conversation with you when he said he would think it over and lef you know?

Mr. ROCHE.—The same objection, your Honor.

The COURT.—The same ruling.

Mr. STANLEY MOORE.—We note an exception.

- Q. Did Mr. Tidwell at that time, either at the time of the first conversation, or when you were first employed as a Special Agent, say anything to you about any compensation that might come to you out of these matters, aside from and distinct from any question of salary as a Special Agent? A. He did not.
 - Q. You are positive in regard to that, are you?
 - A. Yes, sir.
- Q. Did he say anything to you at that time with respect to any proposition made by you that he thought he better write back to Washington in regard to that matter? A. He did not.
- Q. He never said anything about corresponding with respect to entering into any arrangement as suggested by you?
 - A. Not that I know of. [677—621]
- Q. Now, Mr. Powers, I want to ask you again, you have repeatedly read in the papers that you were to receive a percentage of the fines recovered in the event of conviction, have you not?
 - A. I don't remember.
 - Q. Sir? A. I don't remember.
- Q. Do you mean to be understood as now testifying that you can not recall the circumstance of hav-

ing repeatedly read in the newspapers of this city and county the statement that you were to be rewarded by a percentage of the fines recovered?

- A. I may have; I don't remember.
- Q. What did you testify in answer to that question, when you were asked this morning, do you remember? A. I don't remember.
- Q. Do you remember whether or not this morning, you were asked that question?
 - A. Yes, sir, and you showed me several clippings.
- Q. And I asked you too, did I not, if you gave that information and you said you did not; then did I not also ask you whether you read statements of that kind appearing in the newspapers; do you remember that? A. Yes.
 - Q. What was your response?
- A. I told you that any statements in the newspapers that I made to the reporters, that I made the statements, that I may have, but I did not remember reading the other statements.
- Q. Did you not admit or testify this morning that you did read the articles containing such statements in the newspapers, but that you yourself had not furnished them?
- Mr. ROCHE.—I object to that, if your Honor, please, as a misstatement of the testimony given by the witness this morning, and that his answer this afternoon is exactly in accord with his testimony given this morning. [678—622]

Mr. STANLEY MOORE.—The record will show whether it does or does not. My recollection of his

testimony is that he did testify this morning that irrespective of the authorship of the statement and eliminating himself he had read that statement in the newspapers.

Mr. ROCHE.—Counsel is inaccurate in that statement, may it please the Court, because the witness said that while he might have read those portions of the articles relating to rewards, he had no recollection that he did read them and he had no remembrance on that subject, and that is exactly in accord with and likewise consistent with the testimony given by him this forenoon.

Mr. STANLEY MOORE.—That testimony was addressed to a particular article and what was said about a statement coming from a particular person, namely, Mr. Tidwell. It was not addressed to the general proposition as to whether he had or had not read or heard such statements as that.

The COURT.—Well, the situation is this, gentlemen, that the actual testimony of the witness will be at your disposal as soon as it is transcribed; now, proceed and ascertain what he says concerning that matter now.

Mr. STANLEY MOORE.—Very well, your Honor.

Q. What is the fact, Mr. Powers, as to whether or not since this trouble has been on, you have from time to time seen in the newspapers statements to the effect that you were going to receive a portion of the fines?

A. I may have; I really don't remember.

Q. You don't remember as to having seen state-

(Testimony of David G. Powers.) ments of that character?

Mr. ROCHE.—That question is objected to upon the ground that it has been asked and answered a dozen times. [679—623]

The COURT.—That is true; that is what he has said.

Mr. STANLEY MOORE.—Q. In many of these papers, you have given out interviews yourself, have you not? A. I have.

Mr. STANLEY MOORE.—I will ask you this question: have you spoken to Mr. Tidwell during the time that the newspaper articles containing various statements have been appearing with reference to this subject matter,—have you ever gone to Mr. Tidwell and said to him, "Am I to get any percentage of the fines that may be recovered"?

A. No. sir.

Q. Have you ever spoken to him upon that subject in any way, shape or form?

Mr. ROCHE.—You mean as to fines that might be inflicted in this case?

Mr. STANLEY MOORE.—Yes, or as to any fines or rewards that might come to him from the Government?

A. No, sir.

Q. I am not limiting it, Mr. Powers, to this particular case now in question, and I want you to understand that; I mean fines or money or penalties or a percentage of them that may come to you either as a result of fines inflicted in this case or as the result

(Testimony of David G. Powers.)
of penalties or recovery of money that may be made
by the Government in some other case?

- A. No, sir.
- Q. Or any reward whatsoever so far as the Government was concerned, unless it would be in connection with a position?

 A. No, sir.
 - Q. Is your answer the same? A. The same.
- Q. Mr. Powers, do you recall ever seeing in any of these papers any statement by any Government official, or what purported to be a statement by any Government official to the effect that [680—624] what were termed in the articles "civil suits" were to be brought? A. No, sir.
 - Q. Do you recall seeing any such thing as that?
 - A. No, sir.
- Q. Have you thought over the matter of civil suits or criminal suits?
- A. I am not a lawyer and I don't know anything about it.
- Q. And you still don't know any distinction, if there is one; is that right? A. Yes, sir.
- Q. And you have no recollection of seeing in the newspapers that any other action was to be instituted by the Government save and except the criminal action now pending?

A. I don't remember seeing it.

I saw the defendant Mayer with his foot on the expose rod of the scales at Mission street dock No. 2 both before and after the discharge of the "Dumbarden." It occurred many times before the discharge of the "Dumbarden." It was a common occurrence.

I saw him do it in 1905. That was at Mission street dock, at the scales-house; and those were the scales where the weighing-house was on the level of the track, the track being laid along the top of the bunkers. I don't remember the scales-house being changed with reference to its location. The scales-house was always in that position so far as I remember. I have been up to the bunkers frequently. As long as I can remember the scales-house was out on the outer end of the bunker. The cars were operated there by a third rail. They used not to have the third rail. The cars then ran by steam. But they had the third rail down there as far back as I can remember. I cannot remember how they ran the cars before or what the motive power was.

- Q. You testified here yesterday that during these [681—625] years, 1902 and 1903 and 1904, and from 1904 to 1908, that you were friendly to Ed Mayer, and even from 1902 to 1904, and that you used to go around there and chat with him, that he was your friend? A. Yes, sir.
- Q. And you said he used to be down there at the Mission Street bunkers at that time, because from 1902 to 1904 the Fuel Company did not yet have the Folsom Street bunkers at all; is that correct?
- A. I testified that during that time the Folsom Street bunkers were conducted by Dunsmuir during a part of that time.
- Q. From 1902 to 1904, that period that you were testifying about yesterday, you said that Mr. Mayer was mostly at Mission No. 2, as you called it, although

sometimes he would be around at Green Street and at other places, but as I understood your testimony, he was mainly there, he was to be found there; is that correct?

- A. He was between both places; at one time you would find him at Folsom Street, after the Western Fuel took charge of the Folsom Street bunkers; then you would find him at Mission Street during that time, most of the time.
- Q. I am talking about 1902 to 1904; he was, as I understand you, mainly at Mission Street, was he not? A. From 1902 to 1904, yes, sir.
- Q. And you used to go over there and chat with him, you were friendly with him? A. Yes, sir.
- Q. What was the motive power for the cars that were propelled along the rails on top of that bunker on Mission Street No. 2, when you used to go over and talk with Mayer in 1902, 1903 and 1904?
- A. I have forgotten. They used to use steam, at first, and then they used electricity afterwards.

 [682—626]
 - Q. What were they using in those years?
- A. I have just told you I have forgotten; they used steam at first, and afterwards they used electricity.
 - Q. How did they use the steam?
- A. They had a boiler downstairs, which would supply steam for hoisting the coal out of the holds of ships into the bunkers.
- Q. How did they make the cars move up and down the track?
 - A. They used to use steam, at one time. They

(Testimony of David G. Powers.) used steam also at the Mail Dock.

- Q. You do not even remember, and did not observe it closely enough to know what the propulsion was that was sent into those cars that caused them to move, do you, during 1902 to 1904, when you say you used to go up there very often?
 - A. In 1902, I have forgotten.
- Q. Is it not the fact, that you were on those bunkers very, very, very seldom during that time?
 - A. I was on there many times.
 - Q. Where was the weigh-house during that time?
 - A. At the end of the bunkers.
 - Q. Are you positive of that? A. Yes, sir.
- Q. Is it not the fact that during that time it was at the shore end of the bunkers, and not out toward the middle of the bay?

 A. No, sir.
- Q. Do you remember the circumstances of it being changed at the time they changed the motive power of those cars, and moving it clear back to the other end of the wharf, where it was until the wharf was given up?

 A. I do not.
- Q. The weigh-house was on the level of the track when you used to remember it? A. Yes, sir.
- Q. On what level was the weigh-house with respect to the rails [683—627] of the track in 1902 and 1903, and along that time when you used to go there very often?
 - A. It was right over the track.
- Q. Is it not the fact that it was way up above the track, in the same way that the weigh-house is on the Folsom Street bunkers to-day?

- A. I don't remember that.
- Q. You don't remember that? A. No, sir.
- Q. You have been up on the Folsom Street bunkers, too, have you not? A. Yes, sir.
- Q. About how many times, all told, as long as you have been connected to and with the Western Fuel Company, or employed by it, do you say you have weighed coal on those Folsom Street bunkers?
 - A. I don't know the exact number of times.
- Q. I don't expect you to be able to state the exact number, but approximately; would it be a dozen times?
 - A. At the Folsom Street bunkers?
 - Q. Yes?
 - A. Perhaps more, perhaps less; I don't remember.
 - Q. Would it be four times?
 - A. I don't remember.
- Q. What is the number of the offshore bunkers on that Folsom Street dock?
- A. I have forgotten the number of offshore bunkers. They are all pockets, the offshore bunkers are all pockets.
- Q. Well, call them the offshore pockets, what is the number of the offshore pockets on the Folsom Street dock?
- A. I have forgotten the number of the offshore pockets.
- Q. What is the capacity of the scales on the Folsom Street dock bunkers? A. I really don't know.
- Q. You don't know the capacity of the scales, yet you say you [684—628] have weighed there?

A. Yes.

Q. You don't know. Now, you mentioned yesterday an episode of a link, and the name of the custom weigher by the name of Murray?

A. Yes, and also Mr. Freund; I forgot to mention his name to you.

Q. You also testified that you had witnessed the discovery by Mr. Moore, and we will put in Mr. Freund, of that bent link, did you not? A. I did.

Q. Whereabouts were you at the time they discovered it? A. I was on the track.

Q. On the track; where were you on the track, with respect to the weighing-house?

A. Right near the weighing-house.

Q. How close were you to the train?

A. A few feet from it, perhaps ten feet—five or ten feet.

Q. Five or ten feet? A. Yes.

Q. And yet you say you never took the trouble to look at the link? A. No.

Q. Now, you testified yesterday, that you did not pay any attention to it, did you not? A. Yes.

Q. Now, the fact of the matter is, that there are two scales down there on the Folsom Street bunkers, you know that, do you not without reference to what their capacity is? A. Yes.

Q. For instance, we will say this standing desk represents the weighing-house, there is a track comes down this side, the far side of the courtroom, and there is a scales alongside the weighing-house, on that track, is there not, there? A. Yes.

- Q. Then that track extends on and bends over and runs into another track, and you can switch it back and go back by the track that passes alongside the other side of the scales-house, which we [685—629] will take, following the illustration, to represent the space between the jury and that standing desk, is there not? A. Yes.
- Q. Now, it is a fact, is it not, that when they test those scales, one of the parts of testing the scales down there is to take loaded cars, weigh them on the scales on this side, the first scales to which the cars come to, after being loaded from the hoppers, and then they take them around to this side, as they might be taken on their way back to part of the bunkers and weigh them there?
- A. That is done occasionally, once in a while, but not always.
 - Q. How often were you up there?
 - A. Many times.
- Q. Well, it is, whether done frequently or infrequently, one of the methods used in regard to testing the scales? A. Occasionally, yes.
- Q. I say whether occasionally, frequently or infrequently; now, isn't it a fact that when they test those loaded cars in that case on one scales, they carry them around, put them on the other scales, and the weights being different, an examination is made—that is the fact of the matter, isn't it?
- A. Mr. Murray, when he took the scales and brought them around the other side, then he saw the difference in the weight. Mr. Freund—

- Q. You did not pay any particular attention to the matter at the time, did you? A. No.
- Q. You never even took the trouble to look at this link? A. No.
- Q. Till the blacksmith, as you called him, was sent for, and so far as you knew he took the link out, though you don't know even whether he did or not? [686—630]
- A. I saw him go up there and take the link out, but I did not examine the links.
- Q. The blacksmith was sent for and took the links out? A. Yes.
- Q. Now, coming back, for a moment, to the Mission Street bunkers, and recurring to this matter about Mr. Mayer having his foot on the beam, is it or not a fact that after the scale-house was moved down to the end of the wharf, which was the after end or, as you describe it, the end nearest the bay, that the scales were on the level with the track, and the beam was boxed up, covered up, and a man could not put his foot on it? A. It was opened up.
 - Q. That is not correct?
 - A. No, the beam was open.
- Q. How was the beam on the Folsom Street bunkers, in the weighing house? A. Boxed up.
 - Q. Boxed up? A. Yes.
- Q. Who was present ordinarily when "lime juicers," or whatever they may be termed, are discharging their cargoes into the bunkers—who was present ordinarily, if anybody, besides the custom-house weigher?

- A. Well, Mr. Mayer is always present.
- Q. Mr. Mayer is always present; and who, if anybody, in addition, then, to the custom-house weigher and Mr. Mayer is present upon those occasions?
- A. Some poor, unfortunate sailor that can't write his own name, sometimes.
- Q. Who sends that poor, unfortunate sailor, who can't write his own name, to be present upon these occasions?
- A. I really don't know who sends him down. [687—631]
- Q. Do you know whose representative he is, or is supposed to be?
 - A. I suppose the captain of the ship.
- Q. You suppose the captain of the ship picks out some poor, unfortunate sailor, who can't write his own name, to go up there and check these weights?
 - A. At times.
- Q. Now, then, what, if anything, does the poor, unfortunate sailor, who can't write his own name, have to do in respect to writing down the weights?
- A. At times, they don't know how to write down the weights, some of them.
- Q. What do they generally do with respect to writing down the weights?
- A. They sit there and listen to Mayer talking to them, good-natured talk.
 - Q. And sing songs? A. No.
- Q. Mayer isn't a singer. What, if anything, does the man do after listening to Mayer talking, with respect to writing down anything?

- A. I suppose they could hardly write their own name; they get their weights from Mayers at times.
- Q. They get their weights from Mayer at times. Did you ever see any of them there who, when the custom-house weigher would make weights, and would write them down in his book, would look over and see what the weight was, and get it from the custom-house weigher and write down the figures, even though he could not write his own name?
 - A. Yes, I have seen them.
- Q. Isn't it the fact that the weighing is done by the custom-house weigher? A. Yes.
- Q. And that he has a book in which he enters every weight? A. Yes.
- Q. Isn't it a fact that Mr. Mayer is likewise present, and that [688—632] he, too, has a book in which he enters every weight? A. Yes.
- Q. Isn't it a fact that the poor, unfortunate sailor also has a book and that he, too, enters every weight?
- A. The unfortunate sailor at times don't know how to read, and he gets his weights from Mayer, and there are times there are men that can read and take them.
- Q. Were you ever there on the occasion of the discharge of any ship, when the representative sent there by the ship did not write in the book that he has for the purpose, the weights that were recorded by the custom-house weigher? A. I was.
 - Q. When?
 - A. During several times, during 1906.
 - Q. What ship?

- A. I don't remember the particular ship.
- Q. Several times during 1906; what do you mean by "several"?
- A. Well, it would be between 1905 and after that, that time, there was some sailors up there.
 - Q. Were there times in 1906?
 - A. Yes, I remember in 1906.
 - Q. Were there times in 1905? A. There were.
 - Q. And times in 1904?
 - A. I won't go back that far; I am not sure.
 - Q. Now, what ship did that occur with respect to?
- A. I don't remember the name of the ship; there were so many tramp steamers coming here I don't remember their names.
 - Q. Can you remember the name of one? A. No.
 - Q. Not one? A. No.
- Q. Can you remember where their cargoes were from?
 - A. Lime juices, English ships. [689—633]
 - Q. English ships? A. Yes.
- Q. Do you remember where their cargoes were from? A. No.
 - Q. Where did they discharge?
 - A. At Mission Street.
 - Q. At Mission Street? A. Yes.
- Q. Do you remember, did they all discharge at Mission Street? A. All that I remember, yes.
- Q. Where was the scales-house, according to your recollection, at Mission Street, in 1904?
- A. At the after end of the bunkers, after 1905—I am talking about 1905 and 1906, my recollection as to the bunkers.

- Q. What was the capacity of the scales at Mission Street in 1905 and 1906? A. I don't remember.
 - Q. You don't recall that? A. I don't, no.
- Q. Do you remember the name of any captain or any officer connected with any vessel in 1905 or 1906, in connection with which a sailor representing the vessel who could not write down the figures in the book? A. No.
 - Q. Would that sailor be on the job day after day?
 - A. He would.
- Q. And he would not write down anything in the book?
 - A. No, he would get his weights from Mr. Mayer.
- Q. What would he do with the weights that he got from Mr. Mayer after he got them?
 - A. I never followed him to see where he goes to.
 - Q. Would he have any book in his hand?
 - A. Mr. Mayer would give him the weights.
- Q. Well, I know, he would give him the weights, but would the man have any book on his person at the time Mr. Mayer would give him the weights? You have told us Mr. Mayer would give him the weights, but we are trying to find out if the man had any book.
- A. What is the good of a book if you can't write into it? [690—634]

The COURT.—Do not argue the question; answer the question.

A. No.

Mr. MOORE.-Q. He had no book?

A. No.

Q. You testify, do you, positively, that you have

seen representatives of the captain of a vessel there that never even had a book in which to record the weights?

A. Yes, in which to keep the weights look out for them.

Q. And on those boats, out of which some sailor would be selected by the captain who was unfortunate and who could not read or write, there would be a number of men employed, would there not?

Mr. ROCHE.—That is objected to on the ground that that is immaterial, and not proper cross-examination, and that this subject matter has been thoroughly investigated and gone over, and upon the further ground that these questions are all argumentative in form.

The COURT.—I don't know on what ground, but I am going to sustain the objection.

Mr. MOORE.—I will withdraw it.

Q. I want to ask you a question, Mr. Powers, and I want you to pay particular attention to it, Mr. Roche, because it will show it was at least a case of "tit for tat." I want to direct your attention to some testimony that the record shows you to have given this morning, and ask you whether this question was asked of you and this answer made by you?

Mr. ROCHE.—What page is that?

Mr. MOORE.—Page 1706.

Q. (Reading:)

"Q. Now, Mr. Powers, have you seen the statement or heard of the statement that you were to receive a part of the fines or penalties recovered?

"A. Yes, sir, I have read that statement."

Do you recall, Mr. Powers, that question having [691—635] been asked you this morning, and that answer given by you?

A. At the time you made the statement, I really did not understand it.

Mr. ROCHE.—I think in fairness to counsel, may it please the Court, and in fairness to the witness, counsel having the testimony in his possession, ought to read from pages 1712 to the end of this morning's testimony, in which the witness repeatedly testified that while he might have read these statements in these newspapers, he had no recollection of reading them and could not remember whether they were or were not read.

Mr. MOORE.—The witness may have testified differently on that subject, even within a very short space of time, in this morning's examination, but I had it definitely in my mind that when I first asked him, and before there was any backing away, or before he knew where the situation led, he said, "Yes, I read that statement."

Mr. ROCHE.—That testimony appears from page 1712 to and including page 1720, and the questions are repeatedly put and answers entirely consistent with the testimony given this afternoon were made.

Mr. McCUTCHEN.—He says the same thing distinctly on the next page in answer to another question differently phrased.

Mr. MOORE.—I will go ahead and read this question to him; he may want to look at this, too, but you

(Testimony of David G. Powers.)
can follow me, too, Mr. Roche, and perhaps save
some time.

- "Q. Now, Mr. Powers, have you seen the statement or heard of the statement that you were to receive a part of the fines or penalties recovered?
 - "A. Yes, sir, I have read that statement.
- "Q. You have read that statement, have you?

 A. Yes, sir. [692—636]
- "Q. Do you recall reading that statement in the 'Bulletin,' the 'San Francisco Bulletin' of February 6, 1913, at the time the subpoena was served upon the Western Fuel Company to produce its books? A. Yes, sir.
- "Q. And that statement was, in brief, was it not, that you would be rewarded by Uncle Sam with a percentage of any moneys that may be recovered from the accused coal operators? A. Yes.
- "Q. You recall that, do you? A. Yes, sir."
 Now, Mr. Powers, do you recall having been asked
 those questions, and made those answers this morning, without reference to whether your memory,
 shortly after that time, began to fail you?

A. I did not understand your statement, as I thought, when you asked me at the time, about reading the statements in the "Bulletin"—I did not understand you when I answered you "Yes," that you meant about the statements in the "Bulletin," about getting the reward that you have mentioned several times since—I really did not understand your statement.

Q. Have I ever mentioned the "Bulletin" to you, according to your recollection, prior to the time I put the question to you: "Do you recall reading that statement in the 'Bulletin,' the 'San Francisco Bulletin' of February 6, 1913, at the time the subpoena was served upon the Western Fuel Company to produce its books? A. Yes, sir."

Had I ever mentioned the "Bulletin" to you prior to that time? I am talking about prior to that time. Have you any recollection, Mr. Powers, of my having mentioned the "Bulletin" before I asked you the question, "Now, Mr. Powers, have you ever seen the statement, or heard of the statement that [693—637] you were to receive a part of the fines or penalties recovered," and you answered "Yes, I read that statement."

- A. I didn't understand your statement before.
- Q. What was it that you didn't understand this question when I asked it: "Now, Mr. Powers, have you seen the statement, or heard of the statement that you were to receive a part of the fines or penalties recovered," and you answered, "Yes, I have read that statement." What was there about my question to you that you did not understand, that you made the answer that you did?
- A. Well, I did not understand your statement when you were jumping on me.
- Q. What statement did you think that I had reference to? Well, I will ask this, and here I did mention the "Bulletin": "Do you recall reading that statement in the 'Bulletin'—referring to the

statement just put to you, that you were to receive a part of the fines or penalties recovered—Do you recall reading that statement in the 'Bulletin.' the 'San Francisco Bulletin' of February 6, 1913, at the time the subpoena was served upon the Western Fuel Company to produce its books," and you answered "Yes, sir." What was there about that particular question that you did not understand, at the time that I asked it of you, and at the time that you answered it?

- A. I said that I had read statements in different papers, but I forget just exactly what they were, and you put the clippings before me.
- Q. Well, then, the question was asked of you: "And that statement was, in brief, was it not, that you would be rewarded by Uncle Sam with a percentage of any moneys that may be recovered from the accused coal operators," and you answered, "Yes, sir." Now, when I asked you that question, I had asked you the same in effect three times, had I not? [694—638]
 - A. You might have, I don't know.
- Q. And each time you had answered yes, that you had read them?
 - A. I did not understand you.
- Q. Was there anything that you misunderstood when I asked you the question the first time, the second time or the third time, and if so, what was it?
- A. I did not understand your question when you were jumping on me.

- Q. Well, now, you answered the questions, didn't you? A. I did.
 - Q. Did you answer them correctly?
 - A. As correctly as I can remember, yes.
 - Q. As correctly as you can remember?
 - A. Yes.
- Q. Well, then, is it your present remembrance that on February 6, 1913, and at other times, you did read in the newspapers the statements that you would be rewarded by a percentage of the fines that should be imposed?
- A. I may have read them, but I don't remember. I have read statements, different articles coming out in the papers, but I don't know the exact statements which I have read.
- Q. Mr. Powers, have you no recollection as to whether or not in the course of the newspaper articles, time and again, that have appeared concerning these matters, and articles as to which you have contributed the information in part, if not in whole, that the statement was there repeatedly contained that you were to receive a percentage of the fine?
 - A. I may have, but I don't remember.
- Q. I am asking you, you have absolutely no recollection, then, either one way or the other?
- A. No, I don't remember one way or the other in that case. I might have read the papers and I might not have. I have forgotten. [695—639]

(The witness here took the stand to make a correction in his testimony of the day before, which cor-

(Testimony of David G. Powers.) rection was in the words following:)

"The WITNESS.—(Continuing.) Mr. Tidwell—at the time I was sent to the customhouse, I was sent there through a letter, or rather it came about through a letter, and I went to Mr. Tidwell's office, it was prior to that I saw Mr. Masters and Mr. Leo Mayer—not Mr. Leo Mayer—yes, Leo Mayer, of the 'Bulletin,' and when I went into Mr. Tidwell's office, I went in there without knowing anything about a reward or anything, only to keep myself going before a Grand Jury, on account of a letter sent out of the Alameda Jail by Mr. Feedler. When I went there I did not ask for any reward or any reward or anything, but Mr. Tidwell did explain to me about a reward that would come through a custom law but not for sending anybody to jail or anything like that. It came through the money which was received back from the people who had defrauded the Govern-But at the time that Mr. Moore was ment. questioning me, I was confused, I thought he was talking about fines, sending people to jail or such as that."

I have not discussed my testimony with anyone since yesterday, except that I went to Mr. Roche and I told him that I had thought over the testimony, and that I had made mistakes. I told Mr. Roche about the mistakes. He did not tell me that [696—640] I had made the mistakes.

Q. Mr. Powers, as I understand your testimony,

you figured from the time that you were first made a Special Agent that you would make good, to use your expression, and would become a prominent and regular official of the Government, did you not?

- A. There was no promise made about that, but I thought they would make me permanent.
- Q. You expected that by reason of making good that would be the upshot or result of the matter, did you not? A. Yes.
- Q. And when did you first come to know or come to think that that might not come about?
 - A. When I was told about it by Mr. Tidwell.
 - Q. And when was that, about what date, please?
 - A. I don't remember the date, Mr. Moore.
- Q. About is all I am asking you, approximately, how long ago was that?
- A. I should judge about three months before I left, two months or so before I left the service of the Government.
- Q. Well, when was it that you left the service of the Government?
 - A. Somewhere around August, 1913, I believe.
- Q. Well, then, was it within the life of the last month of the series of 90-day appointments as customs agent—was it during the life of that particular appointment, the last one that you received?
 - A. Yes.
- Q. Then it was within 90 days of the 1st of August, 1913? A. Yes, sir.
- Q. Can you fix it any closer than that with respect to how much nearer, if at all, it was to Au-

(Testimony of David G. Powers.) gust 1st, 1913? A. No.

- Q. And up to that time you had expected that you would become a permanent and regular official of the Government? [697—641]
 - A. You mean up to the time that I quit?
- Q. No, up to the time that Mr. Tidwell made this statement to you? A. Yes.
- Q. Now, you testified as a witness, did you not, upon the trial of Robert Donaldson? A. I did.
- Q. I want to ask you, referring to page 51 of the record upon appeal, the printed official record upon appeal in that case, whether upon that occasion, on the 23d day of November, 1912, in this courtroom, or the other courtroom down the hall, in the presence of the Court, the officers of the Court, the attorneys and the jury, these questions were asked of you and these answers made by you—

Mr. ROCHE.—Are you reading from the printed record on appeal?

Mr. STANLEY MOORE.—Yes.

Mr. ROCHE.—Have you a copy of it?

Mr. STANLEY MOORE.—No; I can read it to him and then show it to you?

- "Q. What is your business now? A. Nothing.
- Q. Have you been in the employ of the Government in any capacity since you came out of jail?
 - A. Yes, sir.
 - Q. What capacity? A. As customs agent.
 - Q. Are you a customs agent now? A. No, sir.
 - Q. When did you cease to be a customs agent?
 - A. The other day.

- Q. What day? A. Saturday.
- Q. Last Saturday? A. Yes, sir.
- Q. When do you expect to be a customs agent again?
- A. I do not expect to be a customs agent again."
 [698—642] Were those questions asked of you and those answers made by you upon that occasion?
- A. Many questions were asked and answered and I said, I did not know, as it was my understanding, when I would become a customs agent again.
- Q. The date of that testimony was November 23d, 1912. You were asked there, were you not, as to whether you expected to become a customs agent again?
- A. Not that I remember of. I remember they asked me when I expected to become a special agent again, and I said I did not know.
- Q. Well, do you recollect their asking you the question when you expected to become a customs agent again? A. Yes.
 - Q. You remember that? A. Yes.
- Q. When do you expect to be a customs agent again? A. Yes.
- Q. What now do you state the answer to have been that you made to that question?
- A. I said I didn't know. That was my remembrance.
- Q. Do you deny, Mr. Powers, that on that 23d day of November, 1912, while you were testifying under oath in that criminal prosecution the answer was

made by you, "I do not expect to be a customs agent again? A. Not that I remember of.

- Q. I say do you deny that you made the answer that I have just read to you?
- A. I do deny it as far as I can remember, yes. As far as I can remember I do not remember saying that. My memory is, if I understood that question right, I said I didn't know when I would [699—643] become a special agent again.
- Q. You think then that that also is a question that you may have misunderstood like these other questions that I have asked of you the other day?
 - A. Yes.
- Q. And your recollection is that you did not make the answer which I have just read to you, so far as your recollection serves you in the matter?

A. Yes.

It was a few days before the trial of the Donaldson case that I ceased to be a customs agent in the employ of the Government. It was within a few days thereafter that I became customs agent again, but I cannot remember that it was the very next day after the conclusion of that trial. While I was testifying in the Donaldson case I had it in my mind that I was to become a customs agent again. But I didn't know when.

Q. Mr. Powers, have you ever heard of the sugar case back in Philadelphia where some large fines were recovered by the Government?

A. I think I have.

- Q. You say you think you have? A. Yes.
- Q. What do you mean by that?
- A. I think I have read about that.
- Q. You use the expression "I think"; do you mean by that that according to your recollection you have heard about it?
 - A. I believe I have. I think I have; I am not sure.
 - Q. You believe you have?
- A. That is what I meant by that; I might have heard about it, but I mean I don't know all about it; I didn't understand you.
- Q. But without knowing the actual facts of the case, you think you have heard people speak of them to you, do you not? [700—644] A. Yes.
- Q. Who was it that made mention of it to you according to your recollection?
 - A. I don't know who mentioned it to me.

Mr. STANLEY MOORE.—Q. When was it that you first learned about it? A. I don't remember.

- Q. No recollection? A. No.
- Q. Well, what, if anything, was said to you by this party, whoever he might have been, with respect to the statement of fines and rewards and compensation in connection with that case, if anything?
 - A. I don't remember that.
- Q. Well, what was said about the case? Don't you recall as to whether or not it was said a very large fine had been imposed in the case?
 - A. There might have been; I don't recall.

I do not remember that anything was said about persons who had given the information receiving a large sum of money as a percentage of the fine in that other case. I have only said that the other case might have been mentioned to me by somebody. I do not remember definitely whether it was mentioned or not. I have no definite recollection one way or the other.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [701—645]

BE IT REMEMBERED that thereupon the following testimony was given and that the following proceedings occurred:

- Q. I will ask you this question, Mr. Powers: Have you not yourself stated that you expected to get a very large amount of money out of this case, and when asked how you expected to get that, have you not stated that there was a sugar case back there in Philadelphia, and the man who gave the information there got a very large amount of money, which was a percentage of the fine? A. No, sir.
- Q. Do you testify positively, Mr. Powers, that you have not made that statement here in the City and County of San Francisco?
- A. I am testifying to everything I can remember. I testify that I do not remember making any statements like that.
- Q. The question is, whether or not you testify to that positively or not, or merely is it your answer that you don't remember making any statement like

that? As I understood your answer first, it was that you positively answered "No," you had not made any such statement. Is that correct, or is it that you don't remember?

- A. I don't remember ever making any such statements.
- Q. That is the very point of the question that I am attempting to address you. Do you undertake to say here positively and as a matter of fact, that no such statement has every been made by you?
- A. Yes, I can say to that, according to my own mind, yes.
- Q. When you say "according to your own mind," you mean according to your recollection, or is your mind clear on that, and are you able to positively deny that you ever have done so?
- A. I am testifying that as far as I can remember anything I can remember of—I am testifying positively to what I can remember. [702—646]
- Q. I have to recur to the question again: I want to ask you now again, can't you recollect as to whether, in point of fact, you have made any such statement as that? A. I cannot recollect.
- Q. Do you undertake to testify positively before this Court and jury that you have made no such statement as that?
- A. Yes, according to my mind; I cannot remember ever making any such statement.
- Q. The question is, are you positive that you did not.
 - Mr. ROCHE.—Now a minute. That question is

objected to upon the ground that it has been asked and answered at least ten times within the last five minutes.

The COURT.—I would not go up as high as ten, but the objection will be sustained.

Mr. STANLEY MOORE.—We note an execption.

- Q. I want to ask you further in that connection, Mr. Powers, if you have not also told about this case and said that you expected to get as much as \$60,000 or \$75,000 out of the Government in this case?
 - A. No, sir.
 - Q. Now, you testify positively to that?
 - A. Yes, sir.
- Q. You testify positively that you have made no such statement as that? A. Yes, sir.
- Q. Do you recall having stated to anybody any sum of money as one that you expected to receive from the Government in this Western Fuel matter.
 - A. Yes, I have spoken about it.

Mr. STANLEY MOORE.—Q. Sir?

- A. I have spoken about getting some money I believe for—I don't know—for the coal that was recovered, or rather, for anything that was recovered by the Government. [703—647]
 - Q. To whom have you spoken in that way?
 - A. I have spoken to Mr. Tidwell about it.
 - Q. Anybody else?
 - A. I may have spoke to several.
 - Q. You say you may have? A. Yes, sir.
- Q. Have you any recollection of the names of the other parties to whom as a matter of fact you have

(Testimony of David G. Powers.) spoken? A. No, sir.

- Q. Have you no recollection of the names of anybody you talked to on that subject save and except Mr. Tidwell? A. I may have.
- Q. I am asking you if you cannot recall the names of persons other than Mr. Tidwell to whom you have spoken about it?
- A. I may have spoken to my wife about it; maybe to some others about it, but I don't remember about it.
 - Q. You may have spoken to her about it?
 - A. Yes, sir.
- Q. Now, outside of Mr. Tidwell and outside of her, can you recall having mentioned it to no one else? A. Yes, Mr. Paulsen.
 - Q. Who? A. Mr. Paulsen.
 - Q. Who is Mr. Paulsen?
- A. Mr. Paulsen is a school teacher in Oakland; he lives across the bay.

Mr. STANLEY MOORE.—Q. Do you recall having spoken to your father-in-law about it?

- A. No, sir, I never have spoken to him about it.
- Q. You never have? A. No, sir, I have not.
- Q. Mr. Powers, what, if any, amounts, were mentioned in the conversations between yourself and Mr. Tidwell? A. A percentage of 25 per cent. [704—648]
 - Q. A percentage of 25 per cent of what?
- A. Of the amount that the Government got back, the amount that the Government was defrauded of.

- Q. Of the amount that the Government got back, the amount that the Government was defrauded from?
- A. The amount of duty the Government was defrauded out of.
- Q. Was anything said by Mr. Tidwell that he had recommended or he was going to recommend a civil suit to be brought looking to the recovery of those amounts?
- A. No, sir—just a moment—you were talking yesterday about a civil suit, and when I was thinking it over I kind of recollected about a civil suit as you explained to me—you were telling me about a civil suit, the difference between a civil suit and a criminal suit, Mr. Tidwell never made any such remark.
- Q. Did he say that he had recommended the bringing of some suit for the recovery of the market value of 62,000 tons out of which it was claimed the Government had been defrauded with respect to the import duty, and that the measure of damages in that case would be twice the market value of 62,000 tons, or about \$900,000? A. No, sir.
- Q. What, if anything, was said by him as to the amount of money that would be recovered in case the suit was successful?
- A. He did not say. Mr. Tidwell only told me about receiving 25 per cent of what was recovered—of what the Government had been defrauded out of.
 - Q. Well, he told you 25 per cent, did he not?
 - A. Yes, sir.
 - Q. Did you not ask him 25 per cent of what sum?

A. He told me that it would be the amount of coal which the [705—649] Government was defrauded of.

Q. Did he not tell you that the value of the amount of coal as to which the Government was said to have been defrauded out of duty on, was a certain amount?

A. No, sir; he did not tell me the amount or anything like that; he told me I was to receive 25 per cent of the amount the Government was defrauded out of, that is, on duty.

Q. Did he not state to you that it would be 25 per cent of the amount of coal, or the value of the amount of coal as to which it was claimed that the Government had been defrauded out of? A. No, sir.

Q. Do you state that Mr. Tidwell told you that it was 25 per cent of the amount of duty?

A. Of duty, yes, that the Government had been defrauded out of.

Q. You are positive about that, are you?

A. Well, 25 per cent of the amount of coal which the Government had been defrauded out of, yes, sir.

Q. Was anything said about duty in connection with that, or the matter of duty?

A. Just the amount of coal that the Government had been defrauded out of he told me, and he spoke about duty, yes.

Q. He spoke about duty too, did he not?

A. Yes, sir.

Q. What, if anything, was said, with regard to duty?

A. He said I would receive 25 per cent of the

amount of coal that the Government was defrauded out of—that is, the duty, the duty that the Government was defrauded out of, such as on coal, you know, the duty on coal.

- Q. Were any figures spoken of, Mr. Powers, as to what in dollars and cents that would come to?
 - A. No, sir.
- Q. Did not Mr. Tidwell state to you that the law was that if [706—650] fraud of an actual, wrongful act could be proven with respect to the nonpayment of duty on dutiable goods, that the Government could recover either the goods themselves, if they were still in the possession of the owner, and impose a fine, or if the goods had been sold or passed out of the possession of the owner, then the Government could recover the reasonable value of the goods, and the reasonable value of the goods once again by way of fine?

A. Mr. Tidwell told me nothing about fines at all. He told me about receiving the percentage of the amount the Government would recover, what was defrauded from the Government.

* * * * * * * *

Q. Mr. Powers, did you never have any curiosity to inquire as to what that would amount to in respect to yourself?

A. Mr. Tidwell, after the books had been figured up, had figured the amount of coal that the Government was defrauded out of.

Q. And then what?

A. And then, I think, if I remember right, I think

he figured that the Government had been defrauded out of about \$28,000 or \$30,000 altogether.

- Q. \$28,000 or \$30,000? A. Yes, sir.
- Q. Then did he tell you, after figuring that the Government had been defrauded out of \$28,000 or \$30,000, that it would be only 25 per cent of \$28,000 or \$30,000 that you would get?
- A. I knew that beforehand. I told you before that the amount I was to get would be 25 per cent of the amount the Government was defrauded out of, not only fines or anything like you were putting to me yesterday, which I did not understand. [707—651]
- Q. But after he had figured it up as coming to \$28,000 or \$30,000, was there any conversation between you and him with respect to the matter as to whether that would be the sum out of which the 25 per cent was to be given to you? A. No, sir.
- Q. Has there been no conversation then which went to the proposition as to what in dollars and cents this 25 per cent would amount to?
 - A. No, sir.
- Q. Have you ever made any inquiry of him with respect to that?
- A. No, sir—with respect to it—I asked him the amount of coal one time they were defrauded of.
 - Q. When was it you asked him that?
- A. That was after Mr. Tidwell had figured up the books.
- Q. And other than that there never was anything said between you and him, and other than what you have already testified to with respect to what this 25

(Testimony of David G. Powers.) per cent would come to?

- A. He told me that the 25 per cent would be 25 per cent of the amount which the Government was defrauded out of.
- Q. And there was nothing, as I say, so far as dollars and cents are concerned, mentioned between you and him on that? A. No, sir.

Mr. STANLEY MOORE.—Q. Mr. Powers, what did you figure how much your 25 per cent would be?

- A. Well, I don't understand that; I figured that it would be about one-quarter of that, which was about \$7,000 perhaps.
- Q. It would be, according to your figures, about \$7,000? A. Yes, sir.
- Q. Now, Mr. Powers, you understood that was not to be in this suit, did you not—that this suit was to come first and that [708—652] if there was a conviction here then there would be the other suit?
- A. I never understood anything about any other suit; all I know is what I just told you, Mr. Moore.
- Q. Did you figure that you were to get that particular \$7,000 out of this particular case that we are trying now?

 A. No, sir.
- Q. He told you, did he not, that he was going to have another suit brought in case this was successful?
 - A. He did not, no, sir.
- Q. Through what suit did you think the Government was going to recover \$28,000 or \$30,000?
 - A. I did not know anything about the suits.

Mr. STANLEY MOORE.—Q. Mr. Powers, was it not stated to you that this case was to be brought first, and if it went off all right, then a civil suit would be brought—I will leave out the word "civil," but another suit would be brought to recover the value of the coal, or the duties, whichever it was?

A. No, sir.

- Q. Did you think you were to get that \$7,000 out of the fines which were to be imposed in this particular case in which you are now testifying?
- A. Mr. Moore, you had me muddled yesterday about fines; now, I don't know anything about fines.
- Q. Very well, I will put it this way: Did you think that you were to get this \$7,000 from the Government as the result of the *result* in this particular case—was it to come out of this case in which you are now testifying?
- A. No, sir, out of the amount of money that was defrauded [709—653] from the Government, and from what they made them give back or pay back.
- Q. When were they to be made to give it back, according to your understanding; was it at the end of this case?
 - A. I never had any understanding with anybody.
- Q. When I say "understanding," I mean according to the way it was in your mind, according to the way you understood it. I will put it this way: when were you to get this \$7,000?
- A. I think that they could get the money—well, I didn't really know how they would get it.
 - Q. Was it at the conclusion of this trial, or rather

(Testimony of David G. Powers.) after the conclusion of this trial, if it was successful, that you expected to get this money?

- A. No, I did not think that. I thought perhaps when they could prove it by the books, that they would recover that money.
- Q. The question is, when did you expect to get hold of the \$7,000, that you understood would be coming to you?
- A. When the Western Fuel paid the Government what it owed it.
- Q. When did you expect that would be in regard to this trial and the end of this trial?
- A. I didn't know anything much about trials, about civil suits, as you term it.
- Q. Did you think you were to get it pretty shortly after this trial, or that a long time would go by, maybe several years?
 - A. I didn't know when I would get it.
- Q. Didn't you think about that when you heard you were going to get 25 per cent, and when you afterwards heard or figured that it would be about \$7,000, did it not come into your mind, when am I going to get that money?
- A. No, I really didn't know how they were going to get it, I [710—654] didn't think of how they were going to get the money back.
- Q. Do you mean to be understood as testifying that the thought has never passed through your mind as to when you were going to receive that?
 - A. No, sir.
 - Q. You have given no thought to that?

- A. No, sir.
- Q. You have never given any consideration as to whether it was to come out of this case or whether it was to come out of some other case to follow this case or whether there was to be any other case except this case, as I understand you?

A. I said I figured that after the Government recovered the money I would get it sometime, I did not know when.

Q. I know that, Mr. Powers, but I am talking about cases now; did you ever give any consideration as to whether it would come as the result of this case or whether it would come as the result of some other case?

A. No, sir. I told you before that Mr. Tidwell told me that when the Government recovered what it lost or what they were defrauded out of I would receive a reward.

Q. Was anything said by Mr. Tidwell as to when he expected that would be?

A. No, sir. The only thing he said was, after they had recovered.

Q. You used the word "reward," Mr. Powers; was that the expression that was used also by Mr. Tidwell in speaking of this sum of money or percentage?

A. No, sir; he said I would receive 25 per cent of the amount which the Government was defrauded of.

Q. Then that is your expression or understanding as to what this should be for or should represent, a reward? A. Yes, sir.

Q. Don't you remember me asking you the other

(Testimony of David G. Powers.) day as to any [711—655] fines or rewards that might come to you from the Government?

- A. Yes, sir.
- Q. I used the word "rewards" too, did I not—the same word that you used? A. I think so.
- Q. And you were asked this question: "Q. Have you ever spoken upon that subject in any way, shape or form, or as to any fines or rewards that might come from the Government"; and you answered "No, sir," did you not?
- A. I understood you then, Mr. Moore, to be talking about fines and things. You got me muddled up.
- Q. I then asked you, speaking this way: "I am not limiting it, Mr. Powers, to this particular case"; that is, I referred to the case on trial then, and you understood that, did you not?
- A. I did not understand you; I thought you were talking about fines.
- Q. I said to you, "I am not limiting it, Mr. Powers, to this particular case now in question, and I want you to understand that." As I understand you now, you did not understand that I was not limiting the matter to this case; is that correct? A. Yes, sir.

I testified the other day that I went down with Custom Agent John W. Smith to watch the Folsom Street bunkers. I cannot remember now what the date was. I cannot remember whether I testified before that it was January, 1913. We took our station on the south side of Folsom No. 2, out of sight by that wharf, at the end of Harrison Street. We were

on the wharf, right at the bulkhead over by the dock on Harrison Street. That would be the landward end of the dock. We stood behind a [712-656] kind of shed. No one was with me except Mr. Smith. We remained there until a little after 12 o'clock, and then we shifted our position to the other side, that is, to the north side of Folsom No. 2. We stood behind a place where the transport dock used to be. We were on a level with the dock. Whether the electricity is operating in the third rail during the noon hour or not, I do not know. I am speaking of the time 5 minutes to 12. The customs-house man had gone. We could see him leaving the premises from the position which we occupied. He came down the stairs on the opposite side of the bunker. We could not look through the bunkers; we could look beneath them as he came out. Mr. John W. Smith, who was with me, also saw him. I went down to Folsom Street about three times to make such observations during January, 1913. It was always in the daytime. I did not go there in the night-time. On one such occasion we located ourselves on the top of a roof about a block off. It was the roof of a new building they were putting up on East Street. Mr. John W. Smith was with me on that occasion. Mr. Enlow was also with me on one occasion. Our purpose in going down there was to see the working of the cars, to see what they were doing at noon hours, and to see how they lumped the coal. The only train that I saw moved during the noon hour was the one I have mentioned consisting of four cars in connec(Testimony of David G. Powers.) tion with the discharge of the "Americano.".

On those occasions when I made observations at Folsom Street I watched the hoppers. I did not see any coal poured out of the hoppers into the bunkers below. We went down there to see if in any way the Government was being defrauded; and the complaint of the pouring of coal out of the hoppers directly into the bunkers would be one thing we were looking out [713—657] for. I do not remember when the "juice" goes out of the third rail. It is true that I have worked down there in the employ of the Western Fuel Company weighing coal. I do not know that it is at twelve o'clock sharp that the electricity goes out of the third rail. I do not know that the company generates its own electricity. I think the electricity was furnished by the city. I think they had switches, and that the city furnished the electricity, but I am not sure of it. I have been around there many times. I have worked for the company many years. Part of my duty included the weighing of coal on the top of those bunkers. I do not know that it is a fact that the Western Fuel Company generates its own electricity, and that the electricity goes out at 12 o'clock sharp when the whistle blows.

The four cars that I have mentioned on the occasion of the discharge of the "Americano" went out to the scales. I do not know where the cargo came from that the "Americano" was discharging. I did not see any clerk there representing the ship. I am not aware that the coal the "Americano" was dis-

charging was not coal that had been mined by this company. I do not know whether it was or not. I do not know where the coal came from. At times the importer is represented during the discharge of coal from the ship, but at other times there is nobody there. I am not sure whether the occasions when there is no checker there are or are not the occasions when the company is discharging its own coal. I cannot say that I have any recollection of any instance when a ship's clerk was not there when coal came from Australia. I am not sure about the clerk not being there on Australian vessels but I know there are many times when the clerk is not there. On this occasion when they brought a car over the scales, they dumped at five minutes to one. The four cars were dumped into the inshore bunkers at that time. They were taken on past the scales, and [714-658] over the scales at about 5 minutes to twelve, and switched back. If they had wanted to put coal in the inshore bunker during the absence of the customs officer, they could have raised the chute and shoveled the coal down in. It would not have been necessary to put it in the cars at all. They could have let it run from the hopper. The cars were reloaded after they had been dumped into the bunkers.

The three or four occasions that I went down to Folsom Street to make observations, once with Mr. Enlow and several times with Mr. J. W. Smith, were at various times. I could not specify their dates as having occurred all in January, 1913, even granting

that January was the month that I observed the "Americano." On the occasion when we were on top of the building, I could not tell what was the name of the vessel that was being discharged. I cannot remember the name of any other vessel that was discharged at any of the times we were down there except the "Americano." The occasions, however, were not so close together that they could all have been during the unloading of one ship. I suppose that two or three ships were unloading at the various times that we were down there. In other words, we watched the unloading of two or three different ships. It takes about four days to unload a vessel. We only went down once during the discharge of a single vessel. It might have been a month or two before the discharge of the "Americano," if that was in January, 1913, that I first went down there. I have no recollection whether the occasion on which I went down there before the discharge of the "Americano" was in December, November or October, 1912. I cannot fix the date. The first occasion when I went down there may have been two or three months before the discharge of the "Americano"; [715-659] I am not sure. It is a fact that at different times over a period of two or three months, whether there were two or three occasions, or more than that, I went down there with those customs agents for the purpose of secret observation of the operations of these bunkers. Outside of the car that I claim to have been moved during the noon hour, during the discharge of the "Americano," I

observed nothing else down there. The car that was then moved was loaded before 12 o'clock. It was actually being loaded when the custom-house weigher left for his lunch. It was loading as he went down stairs. It only takes a few minutes to load a train of cars—about three minutes, I should judge. When the loading of this car was completed, it was brought up to the scales. It was then run on past the scales and remained on the switch until close to one o'clock.

My other visits to Folsom Street of which I have spoken also occurred during the noon hour, or, at any rate, covering the noon hour. We made several visits, some of which were before, and at least one of which was after the discharge of the "Americano,"—I believe it was only one.

I several times went down there to watch the coaling from the barges to the vessels, as distinguished from the discharging of the vessels themselves of their imported coal. I do not know how many times, perhaps three or four. This was down at the mail dock. On those occasions I was accompanied sometimes by Mr. Smith, and sometimes by Mr. Enlow; sometimes both of them would accompany me, and sometimes one or the other of them alone. The aggregate of our visits would be three or four.

In addition to the occasion when I watched the "Korea" being coaled from the "Wellington" at night, I also watched the "Korea" being coaled from the "Theobold" in the daytime. I [716—660] have forgotten the number of weights that were taken on the latter occasion. On said latter occasion

the buckets were going up fairly well filled, even when they were not being weighed. They seemed to be taking the weights very well in that case. Both occasions, namely, that when the "Theobold" was operating, and that when the "Wellington" was operating, were connected with the same trip of the "Korea." I also saw the "Wellington" discharging by day into the "Korea," and in connection with this same trip of the "Korea." On that occasion the tubs were going up very badly. The buckets were only three-quarter filled, or a little over. I was on that occasion standing on the deck of the ship. It was in the night-time. Mr. John W. Smith was with me. They were weighing four tubs at a time, instead of one tub. They were weighing a round of tubs about every hour and a half or so. I did not keep count as to how often they weighed. I went down there to see the way the tubs were going up. In answer to the question, "Didn't that include seeing how frequently they would take a weight?" I would answer that Mr. Enlow, or rather Mr. Smith, kept track of that. I do not believe they took four rounds out of sixty. I think the tubs were going up at the rate of about 60 an hour. They weighed the tubs four in succession. They would weigh about one in 90. My best judgment is that about an hour and a half elapsed between the weights. The state of the ship's bunker has something to do with the rate at which the tubs go up. I don't remember which bunker of the "Korea" they were filling at that time. She has about 14 or 15 holes into which

they dump coal, I guess. There are more than ten holes on each side. They were on that occasion filling the "Korea" up aft, and the buckets were little more than three-quarters full. [717—661]

We also went down there once in the night-time to see the "Korea" coaled by the "Wellington." I do not know the name of the custom-house weigher who was present on that occasion when the tubs were going up three-quarters full. There must have been more than 25 regularly employed custom-house weighers. I knew many of these weighers by name, pretty nearly all of them, when I was in the service of the Western Fuel Company. I don't know whether the weigher down there that night was one of the men that I know or not. The custom-house weighers would be transferred around from job to job. I came in contact with most all of them when I was working for the Western Fuel Company. I could get a good view of the custom-house weigher who was there that night, but I have forgotten who I do not remember the name of the customhouse weigher who was on the "Theobold" on the day she was discharging into the "Korea" either. The tubs were going up, as I have said, very well. They were taking the weights pretty well, that is to say, pretty often,-I should say about one tub an hour, or less than an hour. At that time the buckets were going up about 60 to the hour. The "Theobold" is a fast barge. She has a record of 100 buckets an hour. As I said before, I went down there once at night when the "Wellington" was dis-

charging into the "Korea." This was in addition to the occasion when I saw the "Wellington" discharging into the "Korea" by daytime, and to which I have already testified. These three occasions, during the discharge of the "Wellington" into the "Korea,"—once by night and once by day,—and the discharge of the "Theobold" into the "Korea" by day, are the only occasions when I went down there to the Pacific mail dock with Mr. Smith or Mr. Enlow, or either or both of them. Those visits all occurred within the space of a week or so. I think it was in December, 1912. At any rate, it was while the "Korea" was [718—662] there, of course.

Mr. Rosenfeld owned the Mission Street dock when the Western Fuel Company bought it. The Rosenfelds had the contract for coaling the ships before the Western Fuel Company. I have forgotten what changes were made on the docks by the Western Fuel Company during the time of their occupancy, but I have a slight recollection that there used to be a cable there. I think there was a conversion from cable into electricity as the motive power for the Four cars in a train would run over those cars. bunkers in the time of the Rosenfelds, I think. I was up there often. At any rate, the Western Fuel Company used to operate four cars to a train. I don't remember the Western Fuel Company giving up the bunkers at all. I only remember their being dismantled. The Western Fuel Company had the bunkers at the time I left it, which was in December, 1911. It is my recollection that from December,

1911, back to 1902, and even after they had changed to electricity, they operated four cars there together. I do not remember their operating two cars. I do not remember any other change on the bunkers on Mission Street made by the Western Fuel Company other than that I have mentioned. Now that you remind me, however, I think I recall their enlarging the bunkers—some sort of an extension. More pockets were put in. I don't remember any change in the location of the scales-house. I often used to go up there to talk with Eddie Mayer. Now that you remind me, I kind of think that the scales-house was brought from another part of the bunkers and put on the same level with the track. I am not sure that a new scales-house was built. The scales-house was between the inshore and the offshore bunkers, but toward the back end—not right [719—663] the end of the wharf, however. I forget whether the wharf was divided into inshore bunkers and offshore bunkers. The scales-house was a plain scales-house. I think there were windows in it. I am not sure. however. I do not like to testify unless I feel pretty sure of what I am testifying to. That is where I used to talk and chat with Eddie Mayer so often, right there in the scales-house. I believe a man could look out of the window in the scales-house, but he could not see very well on account of the dust further than the first hopper. The man in the scaleshouse was down on the level of the track. The floor of the first hopper would be above the level of the track to the extent of about eight or nine feet.

- Q. Isn't it a fact that the man could look back on the wharf clear to the end, and see the coal coming out of the bottoms of the hoppers into the cars, and see the cars, see the tracks, see the buckets coming up from the side of the ship?
 - A. I don't believe so.
 - Q. What was there to prevent him?
- A. You could not see the side of the ship on account of the hoppers.
- Q. Then we will leave out the side of the ship; but, after the coal came into these hoppers, and was being discharged there, he could see that, couldn't he?
- A. To about the first hopper; it was hard to see when that dust was flying.
- Q. If the floor of the hopper was eight feet above the level of the track, what was there to prevent his seeing along that space there, and the scales-house was on the same level as the track?
 - A. The dust flying, and everything.
 - Q. Dust? A. Yes. [720—664]
- Q. Outside of the atmospheric conditions there, due to the dust lingering in the atmosphere, there was nothing to prevent his view, was there?
- A. Yes, the hoppers were in such a way that one was in back of the other, and it was hard to see past one.
- Q. But this scales-house, as I understand it, that we are talking about, was on the level of the track; is that right? A. Yes.
- Q. And that is the track that the coal cars came over? A. Yes, about the level.

- Q. Do you have to look past one hopper, or try to look through one hopper, if the floor of that hopper is eight feet above the level of the track, and you are standing on the floor of the scale-house, and the scale-house is on the same level as the track?
- A. You can't see through a car, when they are putting coal into it.
- Q. Then you mean outside of the accumulation of dust in the atmosphere, there might be a train of cars that intervened between you, an additional train of cars that was back at some point further inshore along the bunkers; is that what you have reference to?
- A. There might be one train is loading in this bunker and the dust is flying so you cannot see it.
- Q. Aside from the conditions of operation due to the presence of two trains loading at the same time, one further inshore than the other, and the flying of dust, was there anything else to obstruct your view?
 - A. Not that I remember of.
 - Q. Not that you remember of?
 - A. No. [721—665]
- Q. Is there a considerable degree of dust flying down there during the unloading of coal?
- A. There is bound to be more or less dust of different coals, different cargoes of coals.
- Q. Is it in the atmosphere to such an extent as to interfere very materially with a man's vision, that is, his eyesight?
 - A. Yes, that is, you can't see through dust.
 - Q. But I mean when a vessel is discharging, the

dust is so that it bothers a man to look? A. Yes.

I do not remember and have no recollection that the scales rods were boxed in at Mission Street bunkers after the wharf was extended, or that such extension was made just shortly after the Western Fuel Company came into existence; nor do I recall how long it was after the Fuel Company came into existence that the wharf was extended.

Q. Now, who was the weigher that was present at any time that you claim to have seen Mr. Mayer with his foot upon the rod of those Mission Street scales?

A. I don't remember, but I do know of one weigher that used to warn him to sit back from the scales all the time.

Q. Were you present at the time that he gave him that warning? A. I believe I was, yes.

Q. Will you state the name of any weigher whom you saw present there at a time when you say you saw Mr. Mayer with his foot upon the rod?

A. Yes, Mr. Freund;—not upon the rod, but I have heard him tell him to keep away from the rod, to step back.

Q. I am asking you now, Mr. Powers, to state the name of any [722—666] weigher whom you ever saw present there at a time when you say Mr. Mayer had his foot upon the rod.

A. I don't remember.

Q. How many years ago was this?

A. It was many times during the time that I have been around there.

Q. How many years ago would the last occasion have been?

- A. I would not say about that, I forget.
- Q. Can you remember the name of any ship that was discharging in connection with which that occurred?
 - A. I believe, or think, it was the "Dumbarden."
 - Q. You think it was the "Dumbarden"?
 - A. Yes.
- Q. Well, that was the ship that ran so many tons short, was it not? A. That is my belief, yes.
- Q. Don't you know that Mr. Mayer was not even the weigher upon that occasion?
- A. No, I believe he was the weigher on that occasion.
- Q. Were you present on that occasion while that ship was discharging at the top of these bunkers?
 - A. I believe I was.
- Q. Have you any recollection that in point of fact you were present during the discharge of that ship?
- A. I believe I was; I think so; in my mind, I believe I was.
 - Q. In your mind you think you were? A. Yes.
- Q. Are you positive that Mr. Mayer was the weigher who officiated upon the discharge of that particular vessel? A. Yes, I believe he was.
 - Q. Now, can you name—that was back in 1905—
 - A. Yes, before the earthquake. [723—667]
 - Q. Now, can you name any other ship?
 - A. No, I don't remember.
- Q. Well, the ship's clerks are present on those occasions, too, are they not?

- A. On some occasions.
- Q. Are they not generally present?
- A. There are times that I have not seen any clerks up there.
 - Q. Well, then, in the great majority of instances?
 - A. At times, yes.
- Q. Well, was there any ship's clerk present on any of these occasions when you claim you saw Mr. Mayer with his foot upon the scale-beam?
 - A. I don't remember of the clerk being present.
 - Q. You don't remember? A. The ship's clerk.
- Q. Now, you have weighed on these scales, yourself, have you not, and other scales? A. Yes.
- Q. Well, now, do you know it to be a fact that if there is any extraneous pressure or pulling on a beam of that kind, that it makes the scale extremely wabbly and it becomes at once visible, that motion of the beam?
 - A. I only heard just what Mayer did to it.
- Q. Well, do you know, yourself, from your own observation as a weigher, whether or not that is the case? A. I never tried it, no.
- Q. Then you don't know as to whether or not, if there is any pulling on the scales, one side or the other, or on the beam, that it makes a wabbling and uncertain motion? A. No.
- Q. Can you give the names of the ships, or any of the ships, that you claim were weighed by you?
 - A. No, I don't remember them.
- Q. Well, in all those years during which you at intervals were [724—668] weighing ships on these

(Testimony of David G. Powers.) bunkers, can't you furnish us with the name of one that was weighed out by you? A. No.

Referring to the visit that I testified to the other day when Mr. John W. Smith and I watched the coaling of the steamship "Korea" from the barge "Wellington," I would say that our station on the captain's bridge of the "Korea" was about 20 or 30 feet from the bunkers of the ship. The coal was then being discharged into the forward holds. We might have been a little higher, or perhaps on a level with the point at which the buckets tripped. It is my recollection that the captain's bridge would be a matter of 15 or 20 feet above the place where the buckets tripped. I may have had to look down on the buckets. I have testified that it would be very dark at times when the barges were discharging, and that there were not sufficient lights put up for the men to see the quantity of material that was in these buckets. Nevertheless, looking down as I was on the buckets, I could tell by the light on the bumper whether the buckets were full or not. The light was right over the buckets, that is over the bumper. It was perhaps a few feet above the buckets, and I was perhaps a few feet higher still, or on the level. I was about 20 feet away from the buckets when they tipped. I may have testified the other day that it was a distance of 30 or 40 feet, but I do not believe so. In point of fact, I could see how much coal was in the buckets.

One of the men that Mr. Tidwell sent down to the Folsom Street bunkers to see if anything was wrong

in connection with the operations of the Western Fuel Company there was Mr. Murray, a customs weigher. There were only two such men that I know of. [725—669] There might have been more. I made a statement in the "Bulletin" of August 1st that Mr. Tidwell had sent down perhaps two or three men to look out to see whether the Government was being defrauded at Folsom Street. I don't remember the time when he sent them down there.

Mr. MOORE.—Q. Who first introduced you to Mr. Tidwell, Mr. Powers?

A. I went down there—over the telephone, I was telephoning—I was sent down by Mr. Masters. I was not introduced to him by Mr. Masters.

- Q. By what Mr. Masters?
- A. Mr. Stewart Masters.
- Q. What was Mr. Stewart Masters' business at that time, or where was he employed?
 - A. On the "Bulletin."
 - Q. At the "Bulletin"? A. Yes.
- Q. And that was on the occasion in August, 1912, when you first became acquainted with Mr. Tidwell?
- A. I had become acquainted with Mr. Tidwell after that. I was sent down there by Mr. Masters.
- Q. How long after you were sent down there by Mr. Masters, or through the telephone message, was it before you met Mr. Tidwell, or became acquainted with him? A. I went right down.
- Q. Now, did Mr. Masters or Mr. Gleason go down with you? A. No.
 - Q. Was that the time that you talked to Mr. Tid-

well, he said that he wanted time to think it over?

- A. I talked to Mr. Tidwell, yes.
- Q. Was that the occasion when Mr. Tidwell said to you that he wanted time to think it over?

A. Yes. [726-670]

I don't know when it was Mr. Tidwell first spoke to me about this matter of a reward. I don't know whether he brought up the subject right at our very first meeting or not. I do believe that we had a second conversation on rewards, however, but I do not know when that took place.

Mr. Tidwell did not speak to me regarding my testimony on fines and rewards after I came down from the witness-stand here last Friday. I might have spoken to him here in the courtroom, but he did not tell me that I was mistaken in the testimony I had given denying a conversation between himself and myself on the subject of rewards. He has never told me in all the time between last Friday and the present moment that I was thus mistaken. I did tell Mr. Tidwell this morning, just as I had told Mr. Roche, that I had made a mistake in my testimony, but that was on my own initiative. Mr. Tidwell just told me to go ahead and see Mr. Roche, and Mr. Roche told me to tell the Judge.

I don't remember making any statement to Mr. Masters of the "Bulletin" regarding any expectation that I might have had in regard to receiving a reward in this case. Neither do I remember making any such statement to Mr. Gleason of the "Bulletin." I was acquainted with Mr. Gleason on the day that

Mr. Masters telephoned down to Mr. Tidwell's office. I also mentioned here the other day the name of another man on the "Bulletin," Mr. Leo Mayer. He works on the "Bulletin." I do not know what position he has.

When the barges go to the bunkers to be loaded two men ordinarily accompany them. They are barge-men or barge-tenders. One belongs to that particular barge, and the other is drafted from another barge, so that there will be two men when the barge is [727—671] in motion, one to ride on the bow and one on the stern. Those are the only men who ordinarily accompany a barge when she goes over from the mail dock or out in the stream after coaling a vessel. While the barge is being coaled herself, one man, who regularly attends her, stays with her, and the other goes away.

There are about 16 stevedores ordinarily in the employ of the Western Fuel Company to work in the holds of the barges. Two different barges usually work at the same time. There are eight shovelers in each hold and a hatch-tender and an engineer. Sometimes there is a customs inspector seated on the barge when the barge is coaling a vessel. He looks out for opium and matters of that kind, but the inspectors do not always remain on the barges. They walk along the decks most of the time. There is one inspector on each side of the ship. At times the inspector goes down into the barge.

Q. Now, who are these custom-house weighers that you claim found it too dirty to remain around

where the coal was going up and would be in the cabin and other places?

- A. I should judge most all of them.
- Q. Can you name some of them, Mr. Powers, that you have seen doing that?
- A. I say many of them and I don't want to recall and remember one, and pick out exactly one man that did it.
- Q. You needn't pick out one man; just tell us all that you have ever seen doing that?
- A. I cannot tell all that I have seen. I say, as a rule, it was done all the time.
- Q. Can you mention now any particular customhouse weigher that [728—672] you recall having seen doing that? A. Mostly all of them.
 - Q. Can you name them, Mr. Powers? A. Yes.
 - Q. Proceed and do so, please. A. Mr. Hoburg.
 - Q. Yes? A. And many others.
 - Q. Is he the only man that you can name?
- A. No; if I went ahead and named them, I would name them all, if I could remember all their names.
 - Q. Name them.
 - A. I don't remember all their names.
- Q. Well, does that apply to every custom-house weigher, the answer that you have made with respect to Mr. Hoburg, does that apply to every custom-house weigher that you have seen down there?
- A. It applies to the majority or all of them, I guess.
- Q. Now, I am just going to ask you the question once again that I asked you: Is there any other one

of them that you can name outside of him?

- A. I said there was all of them, or pretty near all of them. Of course, there are exceptions to the rule.
- Q. Don't you know the names of the custom-house weighers in addition to Mr. Hoburg?
 - A. I have forgotten the names of all of them.
- Q. Do you recollect the names of any of them aside from him whom you have seen doing that thing?
 - A. I forget their names.

The stevedores or shovelers in the barges sometimes get \$6 a day, and sometimes \$5 a day, being the scale of the Stevedore's Union. Just after the earthquake of 1906 they [729—673] paid a little more; they paid about a dollar a day more than the scale for about a year or so, when they dropped back to the regular Union scale. The overtime paid was a dollar an hour. The barge-tenders used to get \$65 a month, and now they get either \$65 or \$70 a month.

- Q. At the time that you understood, Mr. Powers, that your position was not going to continue, did you not immediately charge with corruption all of the other Special Agents, or at least Mr. Tidwell and Mr. Enlow and Mr. Smith, and say that some of them had had conversations respecting bribery with you?
- A. No, I never remember a time when I received such a communication as you are talking about.
 - Q. Well, did you say that at any time?
 - A. I made statements, yes, sir.
- Q. And that was at or shortly after the time that Mr. Tidwell had told you that these appointments

(Testimony of David G. Powers.) as customs agents could not last, was it not?

- A. I don't remember that time, no.
- Q. You don't remember which time?
- A. The time that Mr. Tidwell had told me that, the exact time.
- Q. The time that he told you about it was within the life of the last 90-day appointment as special agent, which terminated, as I understand you, on or about August 1st, 1913, was it not? A. Yes, sir.
- Q. Now, did you not, among other things say that the special agents were in a plot to fabricate evidence against you looking toward your indictment, your own indictment?
 - A. I said it looked that way to me, yes, sir.
 - Q. It looked that way to you? A. Yes, sir.
- Q. And you claimed that these special agents had been trying [730—674] to get shovelers to say that you had told them to fill full the buckets at such times as they should be weighed with the soft and fine coal as you have described here, but that at other times they were to run them light; did you not?

A. Yes, sir-

Mr. ROCHE.—Just one moment. That question we object to, if your Honor please, as immaterial and not proper cross-examination.

Mr. STANLEY MOORE.—Your Honor, if anything, it only goes to test the credibility of the witness. We can show that this witness has testified to lots of conversations with the defendants in this case, according to his claim, which never occurred; and we will show also that he claimed the same thing,

and claimed it promptly as soon as he saw that his position was not going to last with the Government, he hurled all kinds of charges of corruption and bribery and conspiracy against the special agents, Mr. Tidwell and Mr. Enlow and Mr. Smith. It simply goes to the question of the credibility and the veracity of this witness and the amount of credence that can be placed on his testimony.

The COURT.—I know, but that opens up too many collateral questions. We would have to try them to find out if he was telling the truth. See what a field that would lead us into. The objection is sustained.

Mr. STANLEY MOORE.—Your Honor, I don't think it would take very much time.

The COURT.—That is not the question as to how long it would take in this particular instance, it is the question of how long it might take in any instance. The objection is sustained. [731—675]

Mr. STANLEY MOORE.—We note an exception.

As a matter of fact, I did not tell the shovelers to heap the buckets up full when they were to be weighed, and to put in the soft and fine coal, and at other times to run them light. I never during all the times or time that I was working for the Western Fuel Company gave any such instruction.

Cross-examination by Mr. McCUTCHEN.

I was not on the captain's bridge on both occasions when I observed the coaling of the "Korea" by the barge "Wellington" at the Pacific Mail dock. When I was not on the bridge I was on the deck of the

ship. Canvas was stretched there to protect the ship from coal dust. In answer to the question whether the canvas shielded the barge from the ship at all, I would say it did. It was all over the decks. Even with the canvas stretched I could see in the hold of the barge at the end. I suppose we were 30 feet away from the bottom of the hold of the barge. I could see the tubs in the bottom of the hold from the deck of the ship. We could see around the other end of the canvas. We were only a few feet away from the opening or hole which led into the bottom of the barge. We could see the tubs down there. The tubs when in the bottom of the hold were 30 or 35 feet away from us. The time that would elapse between the moment when the tubs left the hold of the barge, and when they hit the bumper which tipped them over would vary according to the ship and the barge. It would be perhaps half a minute on a slow barge running 60 tubs to the hour. When Mr. Smith and I were on the captain's bridge of the liner we could not see the tubs in the bottom of the hold; but you could see them coming up, though not till the light flashed on them at the [732—676] bumper. The tubs went up at night about 30 tons to the hour. The hoist works just as rapidly at night as in the daytime ordinarily. The tub goes up to the bumper just as rapidly in the night as in the day. You could see the tub when it hit the bumper when the light flashed on it. We could see the tubs and what was in them when they were overflowing at the time the weights were being taken; but you could not see exactly the

contents of the tubs otherwise until they got right up to the bumper and the electric light. You could see the tub come up after it reached the deck where the hatch-tender sits, and after it hit the bumper, and it was in one view all that time after it reached above where the hatch-tender sat. It would travel about 15 feet from the deck to the bumper. I could see what was going on from the hatch when I was hatch-tender.

My father did not have the trimming contract from the Pacific Mail during the time that I was acting as checker under employment of Mr. Chisholm of the Pacific Mail, nor during any of that time. He first got the contract about a year before I got into trouble.

Cross-examination by Mr. STANLEY MOORE.

I have been doing some painting lately. I have been painting my father's flats. I painted three houses for him and some of the inside work, etc.

Redirect Examination by Mr. ROCHE.

I have been under subpoena by the Government requiring my presence here as a witness in this case for many months. I left the employ of the Government about five months ago, namely, in August, 1913. I was then under subpoena in this case, and I have been under subpoena requiring my presence here ever [733—677] since. I have made efforts to gain employment between August, 1913, and the present time. I went to several different people and asked for positions. I honestly endeavored to get employment.

I recall testifying on cross-examination by Mr. Moore to the scale of wages paid from time to time to the various stevedores on barges and ships. I don't know who in fact employed and discharged these stevedores. It is very seldom you ever see a discharge there. The crews would pass from one hatch-tender to another. They worked in together. These shovelers or stevedores are paid by the hour. It is a steady gang. Sometimes, however, it happens that the Western Fuel Company does not have work enough to keep all the men going. It would happen, therefore, occasionally that some of them would be laid off.

- Q. Who had the right to select the particular men who would be laid off on those occasions when there would not be sufficient work to keep all of the men in the employ of the Western Fuel Company?
 - A. The hatch-tender.
- Q. And was he directed, or rather, would he personally select these men, or would he select them under the direction of the defendant Mills, or some other official of the Western Fuel Company?

Mr. McCUTCHEN.—One moment. I object to the question as leading and suggestive. The witness can it seems to me be asked for the fact.

The COURT.—The objection is overruled.

Mr. STANLEY MOORE.—We note an exception.

A. It was directly from Mr. Mills; that is, it came down from Mr. Mills to the assistant. [734—678]

Mr. ROCHE.—Q. Is there any record kept—I will

(Testimony of David G. Powers.) withdraw that question. Who kept tab, if anyone, upon the men who filled these tubs with coal, so far

as the barges are concerned?

- A. Who kept tab on them?
- Q. Yes; who watched their operation?
- A. Mr. Mills and the hatch-tender would watch it.
- Q. You say that during the time you were acting as assistant to the defendant Mills occasions arose when it became practical or necessary to lay off some of the men because of the fact that there was not sufficient work on hand to keep them all employed steadily? A. Yes, sir.
 - Q. That is correct, is it? A. Yes, sir.
- Q. Do you know how the particular individual would be selected or why he would be selected to be temporarily relieved instead of some other employee being so selected?
- A. No, I don't know any special reason. The orders came from Mr. Mills when the work was getting slack or anything to always lay off two men out of every eight.
- Q. And by whom would the men be laid off, by the hatch-tender or by you?
 - A. By the hatch-tender.
- Q. Did it sometimes occur during the time you were acting as hatch-tender and also during the time you were acting as assistant to the defendant Mills that men were permanently laid off because of any vacancy?

Mr. STANLEY MOORE.—That is objected to as

leading and suggestive, and not a proper way to examine the witness.

The COURT.—That does not seem to be very objectionable; the objection is overruled. [735—679]

Mr. BLACK.—We take an exception.

A. No.

Mr. ROCHE.—Q. You say that no man was discharged for that reason?

A. No, sir; they were not discharged for that reason on the two steady barges, but at times they were discharged on the slow barges, you know, extra barges.

Q. For what reason, do you know?

A. Because they could not do their work.

Q. That is just what I am trying to get at; you say they could not do their work; in what respect could they not do their work?

A. Well, they could not get out the amount of coal that was supposed to have been gotten out.

Q. How frequently, if you recall, would a man be discharged from off of these barges for that reason?

Mr. STANLEY MOORE.—That is objected to as assuming that it was the discharge of an individual; he has not said whether it would be a gang or an individual, speaking now of the cases other than the steady barges.

The COURT.—The objection is overruled.

A. Can I have the question repeated, please? (Question read.)

Mr. ROCHE.—(Continuing.) Q. That is, because he was not able to do his work, not able to fill the

loads sufficiently; how often did that occur?

- A. Oh, at different times that I was there.
- Q. And do you know that of your own knowledge, that men were discharged for that reason?
 - A. Yes, sir.
- Q. You recall, of course, as you have testified upon that subject, the day upon which you went down for the first time and had a conference with Mr. Tidwell, the special agent? [736—680] A. Yes, sir.
- Q. And, as I understand your testimony, you went there at the request of—I will withdraw that question. At whose request did you go to Mr. Tidwell's office? A. At the request of Mr. Masters.
- Q. Mr. Masters was at that time, as you have testified, connected with the "Bulletin," and he is at the present time a reporter on the "Examiner"; is that correct? A. Yes, sir.
- Q. And the Mr. Masters to whom you now refer is the gentleman sitting in this courtroom reporting for the "Examiner"? A. Yes, sir.
- Q. Is it or is it not true that before you ever saw Mr. Tidwell and before you ever had any conference of any kind with Mr. Tidwell you first disclosed to Mr. Masters and to Mr. Gleason and to Mr. Leo Mayer the larger part of the facts and circumstances connected with this case and the smuggling case to which you have referred upon cross-examination?
 - A. Yes, sir.
- Q. And that was, as I understand your testimony, before you saw Mr. Tidwell at all? A. Yes, sir.
 - Q. You have said upon cross-examination that Mr.

Tidwell did speak with you concerning your receiving a proportion of the amount of money, being the duties on the value of the coal out of which the United States had been defrauded, and that in your mind, if you were paid that reward, you would get in the neighborhood of \$7,000, or one-quarter of some \$28,000? A. Yes, sir.

Q. Before Mr. Tidwell touched upon that subject either directly or indirectly, had you narrated to him all of the circumstances [737—681] and facts within your knowledge relating to this particular controversy?

A. Yes, sir.

Mr. ROCHE.—Q. Did you at the time you made that statement to Mr. Tidwell, and before any question of reward or compensation in any form was discussed between you and him, state to Mr. Tidwell the reason why you were making those disclosures to him, and if so, I want you to state to the jury what, if anything, you said to Mr. Tidwell upon that subject.

A. At the time I went to Mr. Tidwell's I went there with my mind made up that I was going to be arrested, or I mean, that I was going to be brought before the Grand Jury because of a letter taken out of the Alameda county jail in another person's shoe.

Mr. ROCHE.—Q. Who was the particular individual that was in the county jail at that time and by whom was this letter sent out?

- A. Emil Fiedler.
- Q. And he was doing what?
- A. He was awaiting trial.
- Q. In whose employ was Fiedler at the time he was arrested? A. The Western Fuel Company.
 - Q. In what capacity? A. As barge-tender.
- Q. Now, you say that while in the county jail under arrest he sent out a letter addressed to whom?
 - A. To me.
 - Q. Did you receive the letter? A. No, sir.
- Q. Do you know who did receive the letter or who did obtain the letter? [738—682]
- A. Yes, sir; Mr. Bull received it and turned it over to the federal authorities.
- Q. Before you had a conference with Mr. Masters, or with Mr. Gleason, or with Mr. Meyer, had you been apprised by any of the Government officials of the existence of the letter and of the fact that the letter had been intercepted by some of the Alameda authorities, or the federal authorities? A. Yes, sir.
 - Q. By whom? A. Mr. Head.
- Q. And he was employed in what capacity, and by whom?
- A. As a lieutenant of the customs watch, by the United States Government.
- Q. Before that date had you been brought before the United States Attorney for the purpose of being questioned regarding the subject matter of that communication? A. No, sir.
- Q. You say that you understood that you were to be hailed before the Grand Jury; who gave you that

(Testimony of David G. Powers.) information? A. Mr. Head.

Q. And what did he say in that regard?

Mr. McCUTCHEN.—One moment; if your Honor please—

The COURT.—I thought you were leading up to a conversation, Mr. Roche, between this witness and Mr. Tidwell?

Mr. ROCHE.—I intend to lead up to that, if your Honor please. I want to show the impelling purpose which required him or obligated him to go to Mr. Tidwell's office.

The COURT.—He went down there he says on the suggestion of Mr. Masters.

Mr. ROCHE.—Q. Now, up to that time, that is, up to the time that you were given this information by Mr. Head, had you [739—683] given to the Government officials any information of any kind against Fiedler or against Donaldson or against anyone else? A. No, sir.

- Q. When you went down to Mr. Tidwell's office you say you believed you were going to be brought before the Grand Jury?
- A. Yes, sir, when I went—Mr. Masters thought I was going to be brought before them too when I went down there.
 - Q. You say Mr. Masters told you that too?
 - A. No; I talked to Mr. Masters about it.
- Q. Did you also talk to Mr. Tidwell upon that subject?
- A. I don't remember; I believe I did; I don't remember.

- Q. And was it after you had been notified that you were going to be hailed before the Grand Jury, and after you had been advised by Masters and Gleason and Meyer to go down and see Mr. Tidwell, that you went down there? A. Yes, sir.
- Q. Now, will you just state, as far as you can recall the conversation, what took place between yourself and Mr. Tidwell upon that occasion, excepting those portions of it to which you have already testified?
- A. Mr. Tidwell told me at that time that he would look it up, if I remember right, and think it over, and I should come down again. I don't remember the exact facts there.
- Q. How long were you engaged in conversation with him at that time?
 - A. About half an hour or so, I guess.
 - Q. At the customs-house? A. Yes, sir.
- Q. And you have testified that some short while after that you were employed as a customs agent; is that correct? A. Yes, sir. [740—684]
- Q. Under what circumstances were you employed by Mr. Tidwell as customs agent?
 - A. I was employed at \$3.00 a day for 90 days.
- Q. I want you to go on and state, as nearly as you can recall it, the conversation you had with Mr. Tidwell as the result of which he appointed you customs agent.
- A. I spoke about the opium smuggling, different smuggling, and also about the Western Fuel Company.

- Q. I don't care about that part of the conversation relating to the Western Fuel Company or the opium smuggling, but I want to find out from you how did you happen to be employed as special agent; did you ask him for employment or did he suggest to you employment; that is what I am trying to get at?
- A. No, sir; Mr. Masters sent me down there and I went down there and Mr. Tidwell talked to me about it, and I talked to Mr. Tidwell about it, and he told me to wait awhile about it, or he would let me know about it soon, or something to that effect.
- Q. Did you ask him for employment or did he suggest to you the employment?
 - A. Mr. Tidwell suggested it.
- Q. Did he ask you at that time whether you were employed?
 - A. I don't remember whether he did or not.
- Q. Did you say anything to him on that subject, as to whether you were employed or had been able to obtain employment?
- A. Oh, I said I tried to get work several times, dozens of times, but I could not get work.
- Q. Did you at that time say anything to him as to what you were willing to do if he employed you? [741—685]
- A. I told him I would do anything; I would be willing to do anything.
- Q. Now, upon that same subject, and as leading up to your employment by Mr. Tidwell, upon what date were you released from the county jail?

- A. On the 2d of July.
- Q. That is, you served five months out of a six months' sentence; is that correct? A. Yes, sir.
- Q. You were allowed 30 days full credits for good behavior; that is correct, is it? A. Yes, sir.
- Q. Now, I would like to have you tell the jury just what efforts you made between the date on which you left the county jail at Alameda and when you first broached this subject to Mr. Masters, Mr. Gleason and Mr. Meyer?

Mr. McCUTCHEN.—What effors to do what?

Mr. ROCHE.—What efforts, if any, he made for the purpose of obtaining employment, and particularly from those—I will put it this way: what effort did you make for the purpose of obtaining employment?

- A. I went many mornings, sometimes at six in the morning, down to the Mail Dock looking for work. I told Donaldson I would do anything if he would give me a chance, and they kept telling me they would but they would not do it.
- Q. How often did you go down there at six o'clock in the morning for the purpose of getting work?
 - A. Many mornings.
- Q. And how did you go down there upon many of those mornings?

 A. I used to walk. [742—686]

I have forgotten the name of the barge-tender against whom I made a complaint in connection with the throwing of opium upon that barge, namely, the "Melrose." It was about a month before I got into

trouble on December 13th, 1911, that I made this complaint. Just before I learned about the trouble leading to this complaint, I was aboard the barge "Nanaimo." She was on the north side of Pier 42. The "Melrose" was on the south side of Pier 42 alongside either the "Persia or the "Asia." I first learned that they had opium on the "Melrose" from my father, and I was on the "Nanaimo" when I received that information. Up to that time I had no knowledge of any kind that a transaction of that kind was about to take place. I received this information from my father. I went right over to the barge "Melrose" and aboard her. There I met the defendant, Edward J. Smith. He also told me about the opium and about seeing it thrown overboard from ship to barge. I went right down to the cabin, and I found the bargeman just coming out of a toilet room back of the cabin; and there was the opium, so I told him to get the opium off the barge, and that I was going to report it, that I would not allow it on the barge. I do not know whether he threw it off or not. I went and told Mr. Mills the next morning, and Mr. Mills told me to discharge the man. I mentioned the name of this individual to Mr. Mills; that is, of the barge-tender who had obtained the opium. That was the first time to my knowledge that any thing of the kind had ever taken place on any one of those barges. The occasion when I got into trouble on the 13th of December, 1911, was the first occasion that I ever had any connection myself with an attempt to smuggle opium.

The partnership of my father and the defendant Mills had not been a continuous affair for a period of twenty years. They [743-687] were in partnership on the day on which I got into trouble, and had been in partnership on that particular job for about a year theretofore. The partnership was of a sort that rose up at different times on special jobs and contracts. I don't want to be understood to say that my father and Mr. Mills were partners continuously for a period of twenty years prior to December, 1911. I cannot state how much of the time between my original employment with the defendant Mills and the 13th of December, 1911, Mills and my father were partners. My father was a partner of the defendant Mills at the time I was first employed. They were not at that time trimming the coal of the Pacific Mail Steamship Company. My father had worked for that company, however, in charge of the trimming, for some thirty or forty years. He was on salary at that time. That was before I was employed by Mills. My father was never employed on salary by the Pacific Mail Steamship Company after the date that I became employed by the defendant Mills and my father in 1902. He never worked as a salaried employee of said company after that. Mr. Mills and my father, when they worked for the Pacific Mail Steamship Company, got so much per ton under contract. When I said that my father was a salaried employee of the Pacific Mail Steamship Company, I meant that he was paid by the day. The first time, then, that my father and the defendant

Mills obtained a contract for the trimming of the coal of the Pacific Mail Steamship Company after my employment with them in 1902, was about a year before December, 1911. On a number of occasions during that period my father and the defendants Mills were not partners. It was only when certain contracts were obtained.

When I said upon cross-examination that I was employed [744—688] by the Pacific Mail Steamship Company either thirty or sixty days, I meant to testify that if all the days upon which I worked for that company were put together, they would aggregate thirty or sixty days. I cannot specify the period within which those days would fall. It was around 1909 and 1910, but I am not sure.

I do not recall whether, prior to the visits that were made by me, with Customs Inspector Smith, to the Folsom Street bunkers, to which I have testified, publications appeared in the newspapers indicating that an investigation was being made relative to these alleged coal frauds. Upon the occasion of one of those visits Mr. Smith and myself located ourselves upon the top of a building on the opposite side of the street. That building was about a block and a half away from the Folsom Street dock, and you could not see from our station on it the name of the particular boat that was being discharged at the time.

Cross-examination by Mr. MOORE.

My father was employed by the Pacific Mail Steamship Company for, I should judge, about forty years at various times; that is to say, at odd intervals dur-

ing that period of time. He had charge of the trimming of the coal and of the freight gangs. Somewhere about 1901 my father left the employ of the Pacific Mail Steamship Company in connection with the teamsters' strike. He never thereafter went back to the Mail Company until he got the contract with Mr. Mills in 1910 or 1911; but they were in partnership off and on for the trimming of other vessels from 1901 to 1910 or 1911. Prior to that time my father had been an employee of the Pacific Mail in trimming [745—689] vessels, but he had not, so far as I can remember, been associated at an earlier time with Mr. Mills. The first time that I learned that my father was associated with Mr. Mills in the trimming business, was in 1902.

I did not ask Mr. Donaldson for money after I came out of jail. The letter which I spoke of as having been brought out of the Alameda County Jail, written by Mr. Fiedler, referred to opium matters. I had served out my sentence in jail. That was the only piece of opium business that I was ever involved in. The reason I did not want to go before the Grand Jury was because I feared that if I purjured myself I would be sent to jail again, and of course, Mr. Donaldson and Mr. Gallagher were mentioned in that letter, and I did not want to testify against them. I would have to tell the truth I knew, and I intended to if I went before the Grand Jury. When I had my first conference with Mr. Tidwell we talked both about the opium matter and the Western Fuel matter. Mr. Tidwell said he would think the matter

over, but I do not know exactly what he was to think over. I do not remember that it was some proposition that I had submitted to him. I did have in mind, however, that I might get a job from him.

Redirect Examination by Mr. ROCHE.

Between the date that I was released from the Alameda County Jail and the date that I took up these Western Fuel matters with Mr. Masters, I had not divulged to anyone the information that I had regarding Donaldson or United States Inspector Gallagher. During that period of time I did not desire to give to any official any information which would result in the prosecution of either one of those two individuals. [746—690] That was the reason why I did not wish to go before the Grand Jury.

While I was employed as checker with the Pacific Mail Steamship Company I remember performing duties on the barge "Theobold" at a time when Mr. Freund was acting as customs weigher. As representing said steamship company I had Mr. Freund weigh one in every fifteen tubs, as they came from the barge to go into the ship's bunkers.

[Testimony of Edward Powers, for the Government.]

EDWARD POWERS, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now reside and have resided all my life in San Francisco. I am a brother of the witness who preceded me upon the stand. I am now living with my father. I first went into the employ of the Western

Fuel Company about twelve years ago. My brother first went into the employ of the defendant Mills a short time thereafter. I had myself been employed by the defendant Mills keeping time for the trimmers before my brother entered that employment. It was about ten or twelve years ago that I first began to work for the defendant Mills, and that was about a year before my brother began to work for said mills. The defendant Mills was then, I think, in partnership with my father trimming for the Oceanic Steamship Company, so that my employment was really by the defendant Mills and my father. The service rendered by me in that employment consisted in keeping time and watching the chutes on the Spreckels boats at the same time. I am acquainted with the defend-[747—691] Smith. ant, James B. I was acquainted with Mr. Smith during the time I was assisting Mr. Mills. I left there two and a half years ago, and four years preceding that I was with Mr. Mills, and during that time I was acquainted with Mr. James B. Smith. I have known who he was for a number of years. I first became acquainted with him at the time, or shortly after the time when I was first employed by the defendant Mills and my father as timekeeper. I have been acquainted with the defendant Mills twelve or fourteen years. The relation between myself and Mr. James B. Smith during the last six or seven years has been just that of employer and employee. While Mr. Mills was here, I had very little to do with Mr. Smith, while he was at the office, but while Mr. Mills was away I had quite a few talks

with Mr. Smith. During the last two and a half years I have not been in the employment of the Western Fuel Company. In that period I have not talked with Mr. Smith, except to say "How do you do" to him occasionally. I have known the defendant Mayer ten or twelve years. I was quite friendly with him. I have known the defendant Edward J. Smith casually since 1906. I have come in contact with him two or three times since I left the employ of the Western Fuel Company. Lately I have met him occasionally in the hall, but we have not spoken. I do not known the defendants, Robert Bruce or John L. Howard. My relations with D. C. Norcross, the secretary of the Western Fuel Company are friendly.

BE IT REMEMBERED that thereupon the following testimony was given, and that the following proceedings occurred:

- Q. Prior to the moment you took the stand here which was within the last few moments, had you ever made any statement [748—692] of what you knew concerning this case to the attorneys representing the Government? A. I have.
 - Q. When?
- A. At the office of Olney, McCutchen & Olney, Mr. Moore being present.
- Q. I am talking about the Government's attorneys now?
 - A. No. (Last question repeated by the reporter.)
 - A. I did not.
 - Q. You did not? A. No.
 - Q. Have you been requested upon various oc-

casions by the attorneys representing the Government to advise them, or one of them, [749—692½] of the facts within your knowledge relating to this case? A. I have.

Mr. McCUTCHEN.—I object to that as irrelevant and immaterial, if your Honor please.

The COURT.—The objection will be overruled.

Mr. McCUTCHEN.—Exception.

(Witness continuing.) I have visited the office of Mr. McCutchen and Mr. Olney and made a statement to them. Mr. Moore was also present. Mr. D. C. Norcross accompanied me to that office. That was the only occasion upon which I made any statement to the attorneys representing the defendants. I remember calling at the office of Mr. Roche and Mr. Sullivan and meeting those gentlemen there. They requested me to make a statement concerning the facts within my knowledge regarding this controversy. I did not make such a statement.

I continued in my employment with the defendants Mills and my father until I went upon a trip on the steamship "Newport," one of the Pacific Mail Steamship Company's liners. I left the employ of the defendant Mills and my father to go on that trip. I was the engineer's storekeeper on the voyage. I made one trip only. On my return I left the Pacific Mail Steamship Company and went into the employment of the Western Fuel Company. Incidently, I had worked for the Dunsmuir people, who preceded the Western Fuel Company, and for the Rosenfeld people. I was paid by the Western Fuel Company

for my work with them. I was around with my father keeping time again and fooling around the ships with him or hiring men for him. I worked on the barges. I was also at the same time working for the defendant Mills and for my father in the trimming business. I don't think my brother was employed before the time I left the employment of my father and Mills to take this trip upon the "New-He may have been; I don't remember whether he was or not. I cannot fix the precise date of the beginning of my employment with the Western Fuel Company, after my return from the trip on the "Newport." On the barges I was hatch-tender, [750—693] tipping tubs, I was running the engine. The man who tips the tubs is known as the dumper. I was first a dumper, having charge of the tipping of the tubs. I worked in that capacity on various barges. I guess I worked as a dumper for about two vears. That was before I became a hatch-tender. I got my orders from the hatch-tender, and he told me what barge to go on. During that two years, I might have occasionally acted as hatch-tender, and sometimes I relieved the engineer. During that two years I seen the defendant Mills around there. During that two years I had no occasion to visit any of the docks in the possession of or under the control of the Western Fuel Company, used for the purpose of discharging imported coal at this port, nor did I visit the offshore bunker or bunkers at any time during those two years in connection with these barges upon which I was employed at a dumper. The barges

that I worked on during that two years were engaged, among other things, in discharging coal into vessels which were being coaled by the Western Fuel Company. After my two years as dumper I was emploved on the Pacific Mail track, running the track and bossing the men there. That was at the old mail dock. While I was employed during the aforementioned two years as dumper, my brother David was also a dumper working for my father and the defendant Mills and for the Western Fuel Company. I cånnot remember how long I tended track. I believe I was on the track just before the earthquake. I think Dave came up there on that track quite a while before the earthquake. I had nothing to do with the physical condition of the track. I simply bossed the men, and I had charge of rigging the gear. The track was used by the Western Fuel Company for transporting the coal from the barges on the other side of the wharf to the steamer which was on the opposite side. Generally, on such occasions there would be a barge coaling the steamer on her other side. Occasionally while I was tending track I would relieve the hatch-tender or an engineer who was temporarily incapacitated. When I was a dumper on the barges during the two years heretofore referred to, my station would be about ten or forty feet away from the hatch, in the air. I was above the hatch of the barge, on the framework of the hoist. A man would get kind of dizzy trying to look down into the hold of the barge, [751-694] but the hold was within my observation. I could look

down and see the men shoveling coal there, if they were immediately below the hatchway. I could have seen the men scooping the coal into the buckets had I looked down, but I have no recollection that I did so. I do not remember looking down. As to the number of times during an hour that a bucket would be dumped, it is all according to whatever the hatchtender would hoist. There was an average of forty buckets. It depends on the gang. Some work more rapidly than others. On an average these buckets, on occasions when they would not be weighed, would ascend about every half minute, depending, however, upon the height of the hoist.

After my employment tending the track at the old Mail Dock, I went back to dumping tubs and tending hatch. My time was divided about equally between these two occupations. That went on for about a year and a half. So that, for some period of time before the fire of 1906, I was tending hatch and dumping, and after the fire I became a hatch-tender. In the period that intervened between the time when I left the Mail Dock and the fire, and while I was tending hatch upon these barges, I would have within my observation the men in the hold of the barge. was hatch-tender on several barges. I have never remained with the barge when the barge would be taken over to any of the offshore bunkers of the Western Fuel Company for the purpose of being coaled. The barges would be already loaded when I took charge of them. During the time that I was acting as hatch-tender before the fire and earthquake.

I saw the manner in which the men would load the tubs. The signal for the taking of weights on the barges was given by the Government weigher or by the hatch-tender. He would say, "Put them on the scales." Some barges had platform scales, and some had hanging scales. The hanging [752—695] scale would not be in the center of the hatch; it would be over to one side, and consisted of a beam or rod, upon the end of which the tub would be fastened and the weight taken. The platform scales would have a shifting platform when coal was being discharged from barges into American registered vessels plying between this port and a foreign port. A United States weigher would be aboard the barges, and he would give the order for weighing. Generally, it was the practice while I was on the barges to weigh a round of tubs. Some weighers would take one round in every 15, and some about once in every three or four It depended altogether upon the personnel of the weigher. The general practice of the Government weighers was to take a round of weights about three to five times a day. I would say that the maximum time intervening between the taking of weights would be three or four hours. That was quite frequently the custom pursued by the weighers.

During the two years to which I referred I sometimes worked at night. The practice pursued by the Government weighers in regard to taking weights at night was similar to that pursued by them in the daytime. When weights were not being taken the weigher would sometimes be right at the hatch, and

sometimes he would be walking around the deck of the barge, and sometimes smoking. Once in a while they would go inside of the cabin. When coal had to be weighed at night and it was raining, some of the weighers stayed right at the hatch. The others of them went into the engine-room shed, and stayed there sometimes for some time. The weights would be taken at night-time the same as in the daytime. I know nothing about the number of weights that would be taken at night-time during the two years when I was dumping. When I was hatch-tender, prior to the fire in San Francisco, weights would be taken every two or three or four hours. I have never known them to take weights only once or twice during [753—696] the night. Sometimes they would hoist about 20 tubs an hour and sometimes maybe 80 tubs an hour. The taking of weights every two or three or four hours would occur whether the tubs were moving rapidly or slowly. If the Government weigher were in the engine-rooom, and particularly at night, I doubt whether he would be able to see the quantity of coal which was contained in the tubs that were hoisted from time to time and were not weighed, but I would not say that he could not see them. I have never seen the Government weigher in the cabin. I have seen him walking up and down the barge. I have not watched him closely enough to say whether he would turn around when each tub came up. It is true that he would sit down upon the barge smoking while this hoisting was going on.

For about six and a half years after the fire and

earthquake in San Francisco I continued to attend to the hatch exclusively upon these barges. I was promoted from hatch-tender to assistant to Mr. Mills. and occupied that position for about four years, I think, and was in the occupancy thereof when I finally left the Western Fuel Company two years ago last July 1st. I began as assistant to Mr. Mills in July, 1907. I had been assistant to Mr. Mills for about four years. Prior thereto and for some time before the fire, I was, as I have said, hatch-tender exclusively. Referring now to the period during which I was thus hatch-tender, I would say that the order of the Government weigher to put the tubs on the scales would be, "Put her on the scales" or "On the scales." This order would be given to the hatchtender, who would then call a man up out of the hold to help him. At these times they would be filling the tubs with coal. There would be always three tubs in the hold, and they would be numbered consecutively, 1, 2, 3 and 4. The fourth tub would be in the hoist. There are eight men in the [754—697] gang, two men to each tub, and the two attend exclusively to the particular tub to which they are assigned. The tubs come up one after the other in order of numbers. Sometimes we brought up two men instead of one to help put the tubs on the scales. I would call them up by name. In answer to the question whether the men understood in that case that a weight was to be taken, I would say that I don't know what they thought. Sometimes it was not necessary to bring up men out of the hold. We might have the barge-

man to help us, but that was not the general practice. There would be a sort of cessation in the hoisting of the tubs when the order was given for the men to come up from the hold. The tub may be going up and the weigher may have asked for a weight while that one tub was in the process of being discharged. That was the ordinary way of doing business. The men who came up from the hold would help to pull the tub over and land it on the scales. It would take from three to five minutes to weigh each tub. The time in which the men would have to load the tubs remaining in the hold would be increased by the time which it took to weigh the tubs, which would be considerable.

- Q. To what extent, if I may use the expression, were these tubs filled during that period of time when they were put upon the scales to be weighed?
 - A. They were filled.
- Q. You say they were filled; to what extent were they filled?
- A. That is the only way I can explain it, they were filled.
- Q. There might be two ways of filling a tub. Is it not a fact, Mr. Powers—well, I will withdraw that. Just go on and state how they were filled, to what extent they were filled, [755—698] whether they were filled by being just level with the top or whether they were filled to overflowing?
 - A. Sometimes they were filled to overflowing.
- Q. During the time that you were hatch-tender there, Mr. Powers, what, if anything, did you see

done with the tubs which were contained in the hold of these barges with reference to putting more coal in the tubs after the tubs were originally filled and before they were weighed?

- A. Sometimes they would put more in when they were weighed.
- Q. Is it not a fact, Mr. Powers, that that was a frequent occurrence? A. It was.
- Q. During that same period of time to what extent were the tubs ordinarily filled with coal which in fact were not weighed?
 - A. They were pretty well filled.
- Q. You say they were pretty well filled; what do you mean by saying they were pretty well filled?
- A. There was not much difference between them and the tubs that were weighed.
- Q. You say there was not much difference; what difference was there?
 - A. There might be a few shovelfuls difference.
- Q. Did you ever notice any difference between these tubs more than a few shovels full?
 - A. Yes, sir, I did.
 - Q. Upon how many occasions did you notice that?
- A. When the customs man made me take it off the top, made me scrape the top off.
 - Q. How frequently did that occur?
 - A. Several times.
- Q. What has been the situation there with reference to the occasions that occurred during the time you were hatch-tender, when buckets would be filled to overflowing when weighed and not [756—699]

(Testimony of Edward Powers.) filled when not weighed?

- A. They were filled to suit the custom weigher. If he objected they scraped the top off of them and they were told not to do it again.
- Q. That is not the question I asked of you. You have testified that the tubs that were weighed were well filled; is it not true that you have frequently during that time that you were hatch-tender seen buckets that were weighed filled to their uttermost and buckets that were not weighed filled to such an extent only that the coal sometimes would not reach the tops of the tubs; is not that true?
 - A. Once in a great while, yes, sir.
 - Q. Did not that frequently occur?
- A. No, not so that you could not see the top. They were always pretty well filled.
- Q. After weights would be called for by the customs official upon these boats, how frequently did you see men in the hold of the barge put more coal in the buckets?
- A. When they are clear of the hatch you cannot see the men.
- Q. I am not asking you what you could not see, I am asking you for what in fact you did see; how frequently did that occur?
- A. If they were digging down into the coal in the barge the more they could put on a tub the better it would be for themselves, they would have more headroom then.
- Q. You say the better it would be for themselves, and I suppose it would be better for the Western

(Testimony of Edward Powers.)
Fuel Company too, would it not?

Mr. McCUTCHEN.—That is not fair. Do you think, Mr. Roche, that that is fair? That certainly is very unfair.

Mr. ROCHE.—I will put it this way: Q. How frequently did you see these men put more coal into the buckets that were about to be weighed when weights would be called for? [757—700]

- A. I have seen them do it.
- Q. Is it not the fact, Mr. Powers, that you have seen them do it frequently during the time you were hatch-tender?
 - A. I have seen them do it quite often.
- Q. You have testified, Mr. Powers, that weights would sometimes not be taken for 3 or 4 hours, upon one of these barges; is that true?

 A. That is true.
- Q. Is it not a fact that in those instances, or rather, in a great many of those instances, the tubs which were not weighed did not contain as much coal as the tubs which were weighed?

 A. That is true.

During the time that I was hatch-tender I did not receive any complaints from the engineers in the employ of the Pacific Mail Steamship Company regarding the shortage of the coal, nor did I hear any complaints made by anybody else. I knew one or two of the engineers of said company. The situation that I have described continued in a general way up to the time I became assistant superintendent to Mr. Mills. When we were coaling a ship at night we had some bulkhead lanterns there, that is, ordinary lamps fitted into a box or cage; and the steamer which we

were coaling was supplied with electric lights on the side of the ship, and an electric light cluster shone right into the hatch. There were also some lights up near the falls near the bunker. I hardly think it would be possible for a person who was on the deck of the barge and removed some distance from the hatchway to see the contents of the tubs as they would rise at night. During the time that I was assistant to defendant Mills I would when he went to the country become familiar with his dock books or diaries, for I [758-701] would then keep them. I know that he kept those books ordinarily. I found that out when I became his assistant. While I held that position I would go into his office and talk with him and confer with him regarding the duties I was performing and concerning the business of the company. When he went to the country he explained the books to me. I did not keep the books the first year I was in the office. It was in the second year. He explained the entries to me then, and told me how to make out the reports every day and how to keep the books. When I became assistant to Mr. Mills my duties were practically co-extensive with his, except that I was under him.

Sometimes the barges which would coal vessels would get their coal direct from a steamer, sometimes from the yard, and sometimes from the offshore and inshore pockets. We would get coal from the inshore bunkers by carts. The pockets would be weighed. I believe the coal would also be weighed when it would be brought to us in carts. On those

occasions it would be weighed on the Miller scales, which were located in front of the office at Steuart and Harrison. With the exception of a very few instances the coal which went into the barges was weighed before it reached the barges, so that I would know the exact quantity of coal that was checked into the barge. It was not a general practice to bring coal from the yard to the barge. That was done on infrequent occasions. That yard was located on the opposite side of the street. When coal was brought from the yard to a barge, it would be weighed over the track scales of the Western Fuel Company, and a record would be kept of that coal; so that the weight of the coal would be taken whether it came from the inshore bunker by cart, or from the yard by cart, or directly over the side of a ship, or from the pockets of the offshore [759—702] bunkers. I got a report showing the actual weight of the coal and of each quantity of coal. The defendant Mills would attend to the giving of the immediate instructions with reference to the quantity of coal to be placed upon these barges from time to time. The instructions would first be given to somebody else other than myself. I had nothing to do with the carrying out of the instructions. I would not go to the offshore bunker to see that the coal was laden into a barge, but I have been there once in a while when they were loading. I never went over to the offshore bunker with a barge for the purpose of getting on a certain quantity of coal. Sometimes I visited the Folsom Street dock.

I have been up on the bunkers occasionally. I was very seldom up on the track on the bunkers when I was assistant to the defendant Mills. I might have gone up there once in a week, or once in a month, or twice in a day. On such occasions I would stay just a few minutes. I was present on occasions when coal was being discharged into the towers or hoppers, and from the towers or hoppers by means of cars into the bins below. When I became assistant to the superintendent the Western Fuel Company had possession and control of the wharf at Folsom Street, and I believe at Howard Street. Mission Street, I think they acquired afterwards. I don't think they had Green Street at that time. I have been up to Green Street once or twice. I believe the Western Fuel Company had the Mission Street dock before they acquired Folsom Street. I have been up at Mission Street several times. Eddie Mayer was the weigher there. The scales, when I first visited the Mission Street dock, were located up the track nearest the street or shore line. I do not remember whether the scales were elevated above the track or were on a level with the track at that time. Afterward the scales were changed to the offshore side, very near the extreme east end of the dock. I have been [760—703] in the scales-house at Mission Street. I do not remember in what direction the weigher was obliged to face after the scales-house was changed towards the offshore bunkers. I was more familiar with the Folsom Street dock than the Mission Street dock. I know the position occupied

by the scales-house at the former. I know that there is now no covering over the bunkers at Folsom Street, but I do not know what the conditions were previously. I do not know when the covering was taken off. I have no knowledge upon that subject. The Folsom Street dock and the bunkers have been in their present condition all the time that I have been employed by the Western Fuel Company; there has been no change that I know of. I had very little to do with these bunkers in the discharge of my duties. On the occasions when I visited the Folsom Street bunkers I did see coal being discharged. The towers or hoppers are located over the inshore bunkers. I have seen the coal coming through the chutes of the hoppers into the cars beneath. I never assisted in loading the cars. I have seen some coal drop down from the sides of the cars. Sometimes a lump would lodge itself in the chute, and they could not close the door until they pried that loose, and so naturally the coal ran out, and would continue to run until they closed the door of the chute. In the meantime the coal would run in the bunkers. I never on any occasion saw coal being discharged from any of those towers directly into the bunkers below.

I was not, as assistant superintendent to Mr. Mills, assigned to any particular place. I was all over the front, wherever a barge was working. I would be all over,—sometimes on the bulkhead, sometimes on the steamers, and sometimes on the barges. I did not notice any difference in the method of procedure during this time that I was assistant superintendent

[761—704] as compared to the time when I was hatch-tender. I used, as assistant superintendent, to remain maybe ten or fifteen minutes at a spell on the barges. During the time I was acting as assistant to Mr. Mills, from July 1907, to July, 1911, I frequently saw liners being coaled—frequently saw coal being taken out of barges and discharged into these liners and frequently saw the operation as the result of which the coal was taken out of the barge and dumped into the liners. I saw weights taken during that period of time. There was no difference, so far as the filling of the tubs was concerned then as compared with the method of filling said tubs when I was hatch-tender, and my evidence would be the same so far as the loading of the tubs was concerned, whether they were weighed or not weighed. While I was assistant superintendent there were quite a few complaints from engineers of the Pacific Mail Steamship Company regarding the shortages of coal. communicated these complaints to the defendant Mills. I am acquainted with Marine Superintendent Chisholm of the Pacific Mail Steamship Company. I knew he had charge, as marine superintendent, of the coaling of the company's vessels. The complaints that came to me from engineers were not always about shortages. Sometimes they had reference to the quality of the coal. I received complaints concerning shortages of coal quite often,—whenever they could catch me, that is, I guess, when I did not see them coming. I cannot remember how often I received complaints while I was assistant superintend-

ent, but it was quite often. I would say in answer to these complaints that we were selling the coal by weight, and that the United States custom men were weighing it. When I spoke to the defendants Mills about the matter, he would tell me that the United States custom men were weighing the coal. He gave me the same excuse that I was giving the other men, and it was a true excuse. The custom weighers were weighing the coal. In answer to the question whether the defendant Mills ever suggested to me the propriety of telling the men in the hold that they ought not to put any more coal in the tubs that were weighed than in the tubs that were not weighed, I would say that Mr. Mills told me that the chief engineers were always growling,—that it [762—705] was part of their job to growl. He asked me if I had any trouble with the weighers, and I said no, that they were weighing the coal, and that they were not kicking. Mr. Mills told me not to have any trouble over there. I have no distinct recollection of his telling me to suggest to the men in the hold that they should not put any more coal into the tubs that were weighed than in the tubs that were not weighed, but he may have told me that—I don't remember, that is a long time ago; he may have told me that, I have forgotten. Referring now again to the time when I was hatch-tender, I would say that the fine coal in the barges naturally drops down, whereas the lump coal runs off into the wings. The conveyor is located right over the center of some barges.

Q. When you come to discharge the barges, what

have you observed with reference to the character of the coal which is contained in the tubs that are weighed as compared with the character of coal that is contained in the tubs that in fact are not weighed?

A. It is about an average.

Q. You say it is about an average; during the time that you were working as a hatch-tender upon these barges and while you had within your observation the men working in the holds of these barges loading coal into the tubs, did you ever see these men when weights were called for fill the tubs with fine coal so that the tub would be completely filled, and the crevices between the coal likewise filled?

A. Well, it was according to where they were working; if the barge was listed to starboard there may be three tubs on one side taking the list out; if she were upright they would work it out even. [763—706]

Mr. ROCHE.—Q. Without reference to whether the barge was listed or what the men were doing, when the buckets were not weighed, have you or have you not observed the men upon occasions when weights would be called for put additional coal upon the tubs, part of which was fine coal?

A. When they were in the hatch I could see them, but when they were out of the hatch I could not.

Mr. ROCHE.—Q. You mean away from the hatch?

A. Yes.

Q. Upon the occasions when you did see them while

they were in the hatch and loading the buckets in the hatch, did you see that occur?

A. I did.

- Q. Now, let me ask you this question,—you have been in the coal business for quite a long while; does a bucket that is loaded with fine coal weigh more than a bucket that is loaded with lump coal?
- A. Well, the fine coal should weigh the most because the lump coal is not stowed as tightly in the bucket, but if the bucket is mixed with fine and lump coal I believe that is the heavier.
- Q. Let me put the question this way to you: If a bucket that is mixed with fine and lump coal has additional fine coal alone put into it, it increases the weight to a considerable extent, does it not?

A. It increases the weight, yes.

Q. If a tub is filled up to about level with the top, with mixed coal; that is, with lump coal and fine coal, can you put more fine coal into that bucket than you can put lump coal and fill it to its uttermost?

[764—707]

A. You certainly could put more fine coal into the bucket.

I don't think Mr. Mills explained to me what the entries in his dock books or journals represented; he just told me how to make the entries in the book and how to make the reports. I made some of the entries. I don't recall any period of time during which I was acting as assistant to the superintendent when complaints were not made by engineers of the Pacific

Mail Steamship Company and other boats regarding shortages of coal. The complaints were made from time to time during the entire interval. I would give the excuse and then walk away from them. They may have said lots of things but I did not hear what they said. I think Mr. Chisholm once told me about the matter, and said that Mr. Bunker had complained. I believe he also called my attention to a complaint made by Mr. Hamilton, the chief of the "Siberia." I believe also that I had complaints direct from Bunker and Hamilton, as well as from other engineers. I also received personal complaints from Thomas Sawden, chief on the "Peru," and then on the "Mongolia." There was another complainant, whose name I do not recall; he is now dead. Thomas Sullivan, who succeeded Mr. Sawden on the "Mongolia," also complained. During the receipt of these complaints I was familiar with the books of the defendant Mills.

- Q. During the time that you were assistant to the superintendent, keeping the records, and furnishing the defendant, Mills, with reports from time to time, of course you knew, did you not, the exact quantity of coal which was checked into the barge, and the exact quantity of coal that was checked out of the barge? [765—708]
 - A. I did, by the reports that were given to me.
 - Q. By the reports that were given to you?
 - A. Yes.
- Q. And you knew, did you not, that at least in a great number of cases, there was more coal taken out

of the barge, so far as weight was concerned, and so far as your records were concerned, than was put into the barge?

- A. So far as the records were concerned, yes.
- Q. How frequently did that occur, as compared with the times it did not occur, in your judgment, during the time that you were acting as assistant superintendent? A. It occurred regular.
- Q. Isn't it a fact that it occurred practically at least as often as 95 per cent? A. Yes.
- Q. Now, knowing as you did, from the records, that at least in weight, there was more coal checked out of the barges than was in fact laden into the barges, did you say anything to the defendant Mills about that, when these complaints were made to you?

A. No.

Q. Did Mr. Mills call your attention to the fact, when you communicated these complaints to him, and he said, "Well, the Government weigher is weighing the coal"—did you say anything to him; did you call his attention to the fact that his own personal records disclosed that there was more coal checked out of the barge than was checked in?

A. No.

Mr. ROCHE.—Q. Did the defendant Mills ever discuss with you the cause for the difference in weights that were checked in, as compared with the weights that were checked out? [766—709]

A. He did not.

Q. He did not?

- A. No, except when he ran short, he made a howl, that is all.
- Q. How frequently, how often did the barge run short?
- A. Two or three times—to my knowledge, a couple of times—two or three times.
- Q. Was that the subject matter of any discussion between yourself and the defendant Mills?
 - A. No.
- Q. Well, you say that the defendant Mills would holler if the barge went short. Did you have any trouble with him from the barge going short?
 - A. No, he just spoke of it, that is all.
 - Q. You say he just spoke of it; what did he say?
 - A. That barge ran short; that is all he said.
- Q. Did he make any complaint about it running short?
 - A. I don't remember whether he did or not.

The COURT.—Q. What do you mean by "howl"?

A. Well, "The barge is running short; what is the matter." That is all.

Mr. ROCHE.—Q. That is, when a barge did run short, he would say, "What is the matter"?

- A. Yes.
- Q. Did he say it in the same tone of voice that you said it, or would he say it in a different tone of voice?
 - A. He would say it in a moderate tone of voice.
- Q. Can you recall anything else, any other language used by the defendant Mills, excepting that, in connection with a shortage when it would occur upon a barge?

- A. No, I cannot recall any other.
- Q. You can't? A. No. [767—710]
- Q. Are you prepared, are you in a position to testify distinctly or clearly that he did not say anything else?

 A. No, I am not; I don't remember.
 - Q. You don't remember?
 - A. Don't remember whether he did or not.
- Q. Now, of course, you knew—I will withdraw that question for just a moment. So far as the coal contained in the pockets of the offshore bunker is concerned, what knowledge have you upon the subject, as to whether the coal had or had not been weighed?
 - A. It had been weighed.
 - Q. It had been weighed?
 - A. To the best of my knowledge.
- Q. Well, now, from whom would you get the weights of the coal that came out of the offshore pockets, or pockets of the offshore bunkers?
 - A. Edward Mayer.
 - Q. The defendant, Mayer? A. Yes.
- Q. Did he ever at any time tell you—did he ever tell you that the figures which he gave you representing the weight of the coal coming out of the pockets of the offshore bunker, were not correct?
 - A. He did not.
- Q. What statement, if any, did he make regarding the accuracy of those weights?
- A. He just left the weights on the desk and walked away.
- Q. By the way, when a barge would go over there ordinarily for coal to the offshore bunker, would they

(Testimony of Edward Powers.) clean out a pocket? A. Yes.

- Q. By the way, do you know how much coal would ordinarily be contained in each pocket or compartment of the offshore bunker on the Folsom Street dock? [768—711] A. They were different.
 - Q. You say they were different?
 - A. There were different amounts.
- Q. What would be the approximate weight for one pocket, as an average? A. 45 tons, or 50.
 - Q. And they run up, sometimes, to 70 tons?
 - A. I think so.
- Q. When a barge, for instance, would want 500 tons of coal, would you, or, rather, in loading that quantity of coal upon the barge, would you discharge one pocket after the other, until you got approximately that amount, or until all of the pockets that were open were discharged?
- A. I believe they would tell Mayers what pockets to put into the barge.
- Q. And you would get the exact weight of the coal contained in those pockets? A. Yes.
- Q. And then you say when the coal would be brought to you by—I will withdraw that question. When the coal was discharged from a ship which was discharging at the Folsom Street dock, or at any other dock, would the coal first be weighed before you would get it? A. Yes.
- Q. Well, now, just describe to the jury how would you get that coal, where would the barge be located, and how would you get the coal that came direct from the ship?

- A. It would be loaded down toward the end of the wharf, it would be loaded through the pocket to the barge.
- Q. That is what I want to get at. The barge would lay alongside one of the pockets, or some of the pockets of the offshore bunker; is that correct?
 - A. Yes.
 - Q. And the pockets would be entirely cleaned?
 - A. Yes. [769—712]
- Q. The coal, then, would be discharged from the ship in which the coal was imported into this port by means of these hoppers to which you have referred already, or towers? A. Yes.
- Q. And the coal would then be dropped from the towers or hoppers into the cars? A. Yes.
 - Q. And run upon the scales and weighed?
 - A. Yes.
- Q. And then the coal would be switched over upon one of the other tracks, and brought down to the pockets which were open and which were leading into the barge? A. Yes.
- Q. And the coal would be taken into those pockets and would be permitted to go right directly to the barge; is that correct? A. Yes.
 - Q. So that the coal would all be weighed?
 - A. Yes.
- Q. Now, it frequently happened, did it not, or sometimes happened, that a barge would be cleaned up within two or three days? A. Yes.
- Q. In other words, that a quantity of coal would be put upon a barge, and that coal taken over to a

boat and discharged into the boat, and a cleanup would occur? A. Yes.

- Q. That sometimes occurred? A. Yes.
- Q. And it is also true, is it not, Mr. Powers, that in those instances where a quantity of coal would be taken upon the barge, and the barge taken over and discharged into a boat, or boats of the Pacific Mail Steamship Company, or some other line, or that line and some other line, that a cleanup would occur, in other words, all of the coal on the barge would be taken off? A. Sometimes.
- Q. Sometimes; and it is a fact, is it not, that in almost every instance where that occurred, where coal was put into the barge [770—713] and taken out within two or three days, or within a day or two and a cleanup would occur, that there would be an overage? A. Yes.
- Q. And it sometimes occurred that in some instances, at least, there would be a considerable overage; isn't that true? A. In some cases, yes.
- Q. Did you ever pursue any investigation in instances such as those, to find out how a quantity of coal checked into the barge, having a particular weight, would weigh out of the barge within a day or two at another weight, thereby creating an overage in the discharge of the barge? A. No.
 - Q. You say you never did make an investigation?
- Q. Let me put the question direct to you, Mr. Powers: You were in charge of these barges as assistant

(Testimony of Edward Powers.) superintendent? A. I was.

- Q. You knew the weight of the coal that was put into the barge, didn't you?
 - A. If I had the books, I did, yes.
- Q. The records came under your supervision, first, didn't they, the records they turned over to you?

 A. While Mr. Mills was away.
 - Q. How often would he go away?
 - A. On his vacations.
- Q. Do you remember a particular year during which he did go away? I notice in some of these books, Mr. Powers, in your handwriting, there, there would be an overage; for instance, I notice there is an overage on June 3, 1909, 106 tons, 809 pounds. Now, without going into these matters in detail, without directing your attention at this time to any specific item, or any particular item contained in this dock book, I want to ask you what was [771—714] it that caused the overage in these particular instances in which the entries were made in your own handwriting, showing an overage? A. I don't know.
 - Q. You say you don't know? A. Yes.
 - Q. Have you any idea at all upon the subject?
 - A. Very little.
- Q. Well, very little; however small or infinitesimal that knowledge may be, Mr. Powers, we would like to have the benefit of it. What is your knowledge upon that subject, however small it may be?
- A. The only information I have is they were loaded with so much coal and they overrun, that is all.
 - Q. Of course, that is shown by the books, but I am

asking you, in view of the services which you rendered on behalf of the Western Fuel Company, and the knowledge that you acquired during the time you were hatch-tender, and during the time you were assistant to the superintendent, Mills—what knowledge have you upon the subject, as to the cause of this overage?

A. Moisture helped a little.

- Q. You say moisture helped a little? A. Yes.
- Q. What kind of moisture?
- A. Moisture out of a hose.
- Q. Oh, moisture out of a hose? A. Yes.
- Q. Was that Spring Valley moisture?
- A. No, salt water.
- Q. To what extent was this salt water moisture responsible for the overage?

A. Well, they turned the hose in, and, I guess, that added a little to the weight.

The Chinese crew on the steamers would play the water [772—715] upon the coal on the barge sometimes for three or four hours. I stopped that practice once or twice. The practice was an occasional one. It would frequently happen that coal would be discharged from the barge into the vessel without any salt water being upon it at all, and that notwithstanding that fact there would be an overage. I also thought that the method of weighing, that is to say, the custom of having some tubs go on the scales a little heavier than others, might be responsible for the overage. It is true that the overage, or a large part of it, was due to the fact that there was more coal in the tubs which were weighed than there was in

the tubs which in fact were not weighed. In Mills' diary for 1909 the page commencing Monday June 14, 1909, is the first page in this diary upon which entries in my handwriting appear. The entries in that diary, commencing June 1, 1909, and extending along until the defendant Mills commenced to again make entries, I believe were made by me from reports which I obtained.

The reports showing the weights of the coal which was laden into these barges from the various steamships and bunkers, were obtained by me and entered by me in this book for the period indicated; and the same is true with reference to the weight of coal checked or discharged from the barges. When Mr. Mills was himself making the entries he got the items concerning the barges directly from me, or by message sent by me; that is to say, all of the figures relating to the barges were supplied and furnished in the first instance by me: so that I was equally as familiar with the supposed weights of the coal as checked into the barge and checked from the barge as was the defendant Mills. After sending these reports to defendant Mills I did not ever examine the books for the purpose of ascertaining [773-716] whether the reports sent him by me were correctly entered in the books. I have no recollection of the barge "Theobold" receiving from the offshore bunkers on December 9, 1910, 326 tons, 1330 pounds of coal, and on the 10th and 11th days of December, being within the next 48 hours, discharging this cargo she had to the "Manchuria" and checking out 466 tons, 1299 (Testimony of Edward Powers.) pounds, or an increase of 42.6 per cent.

Q. Have you any recollection at all at this time of any transaction which occupied only a period of three days, during the first of which days a quantity of coal was discharged in the "Theobold" and during the next two days that coal was discharged from the "Theobold" and there being an overage existing of some 42 per cent?

A. I did not pay any attention to that; I did not remember that. Mr. Mills did not say anything to me, so I did not pay any attention to it.

The reports which I sent to Mr. Mills of the weight of the coal checked out of the barges into vessels of the Pacific Mail Steamship Company were in the handwriting of [774-7161/2] E. P. Park, chief weigher of the Pacific Mail Steamship Company. The reports which went to Mr. Mills showing the weights of the coal checked into the barges were in the handwriting of Eddie Mayer. When I had the books I copied those entries in them in my own handwriting. Eddie Mayer delivered these reports directly to Mills. It was the reports of Park that I sent to Mills. The only time Mayer ever gave any reports to me was when Mills was away on his vacation and I had charge of the books. I did not know anything about the quantity of coal that went into the barges excepting during these vacations of Mr. Mills. Sometimes Bud Hopkins, the timekeeper of the Western Fuel Company, as well as myself, would make entries in the diaries of Mr. Mills in the absence of the latter.

- Q. During the time you were acting as assistant superintendent, when Mr. Mills was himself in the city, you, of course, knew, did you not, or became familiar with the fact that overages occurred, from time to time, upon the barges?
 - A. No, I have no definite knowledge of that.
 - Q. You say "definite knowledge"?
- A. I might have looked over Mills' shoulders when I was talking to him, and saw overages there; otherwise, I didn't know.
- Q. Did you ever make any inquiry of the defendant Mills to ascertain whether the barges were, in fact, over?
 - A. I don't remember whether I did or not.
- Q. Is that the best answer you can make to that question? A. Yes.
- Q. Did the defendant Mills, whenever a shortage would occur in the discharge of a barge, speak to you about the shortage?
- A. He spoke once or twice concerning the shortage.
- Q. There were not very many shortages, were there? A. No. [775—717]
- Mr. ROCHE.—Q. Now, of course, you kept these books, did you not, in the same way that the defendant Mills kept the books during the time that he was in San Francisco? A. Well, I tried to do so.
- Q. Did it sometimes occur—in fact, did it not frequently occur, Mr. Powers, that one of the barges,

during the time that you were assistant superintendent, would take on coal one day, either from a vessel in which coal was being imported to this port, or from some of the pockets of the offshore bunker, and discharge that coal within two or three days thereafter? A. Yes.

- Q. And is it not also the fact, Mr. Powers, that in those particular instances, where the barge would be clean, upon a particular day, and where she would take on coal and discharge the coal thus taken on within two or three days, that there would be quite an overage?
- A. It states in the book; I don't exactly remember how much of an overage there would be.
- Q. Haven't you any recollection upon that subject at all?
- A. I know there were overages on the barge, I don't know how large or how small.
- Q. I know, but as assistant superintendent, or as assistant to the superintendent, Mills, employed by the Western Fuel Company, and having charge of these transactions, didn't you familiarize yourself from time to time with the weights of the coal taken on and discharged from these barges?
 - A. When I had the books, I did.
 - Q. When you did not have the books?
 - A. No. [776-718]
 - Q. You say you did not? A. I did not.
- Q. Well, when these complaints were being made to you from time to time by engineers in the employ of the Pacific Mail Steamship Company, for instance,

confining your attention at this time to those complaints, did you know whether there was any justification for the complaints?

- A. Well, I thought there might be.
- Q. You thought there might be. Why did you think there might be?
- A. The barge showed a little overage; I thought there might be something to do with it, moisture and so forth.
- Q. Of course, that is not a complete answer to my question. You say that you did think there might be some cause for the complaints made from time to time by the different engineers, with reference to the quantity of coal or the shortage of coal, or the quantity of coal that was discharged into the ships upon which they were acting as engineers. Now, I will ask you why, in your judgment, or rather, why did you believe or did you think or conclude that there was justification for those complaints?

A. The fact that the barges overrun; they show in the book they overrun.

Q. And that indicated to your mind what?

A. Well, they were getting less coal than was charged to them.

Q. Well, now, having that knowledge, or having that belief in your mind that these steamships were getting less coal than was charged to them, and having knowledge, as you have testified, concerning these overages, did you have any conversation of any kind with the defendant Mills regarding the overages that occurred from time to time, according to

(Testimony of Edward Powers.)
your testimony, about 95 per cent of the discharges
on the barges? [777—719]

A. I just mentioned, as I said this morning—I mentioned that to Mr. Mills, and he said he was selling the coal by weight, and not by measurement.

Q. Was that the only answer he made?

A. Yes. I do not remember having any conversation with the defendant James B. Smith upon that subject.

I think I reported the Bunker complaint concerning the overages to the defendant, J. B. Smith. Bunker was the chief engineer of the "Manchuria." As far as I can remember I told Mr. Smith that Bunker was kicking, and I believe he replied to me, "He is always kicking," or something like that. That is all I remember that he said. I never had any conversation with defendant James B. Smith about how it happened that the Pacific Mail Steamship permitted these shortages to exist.

Mr. Smith's office, have a conversation with him about Mr. Schwerin, the head of the Pacific Mail Steamship Company. Mr. Smith asked me regarding the trimming of the ships, and whether he could save money in the discharge of the barges by having my father do the work. I told him he could. He said he would put the matter up to Mr. Schwerin, and let me know. That is the only time Mr. Schwerin's name was mentioned so far as I can remember. I don't remember any conversation with the defendant Mayer about these overages on the

barges, or the alleged discrepancy existing between the in-take weight and the out-turn weight. I recall the storeship "Algoa." It was, I think, about five years ago that coal was laden into her. I could refresh my memory from the records of the defendant Mills as to the time and the quantity of the coal. I did not have charge of the loading operation, though I was assistant superintendent at the time. I think one of the vessels from which the "Algoa" was loaded was the "Indra," and that the other was the "Thyra." The coal was laden into the "Algoa" from these two vessels over the side. It was weighed and a Government weigher was present. By overside [778—720] loading I mean that the vessels were discharged of their coal into the "Algoa" by means of tubs hoisted up; in other words, that the coal did not pass out of the Folsom Street dock or go through the yard. It was weighed on the deck of the discharging ships by averaging the weights.

(Mr. Roche, of counsel for the Government, here directed the attention of the jury to a portion of the Mills dock books or diary of 1908, which book was already in evidence. The portion of said book to which the attention of the jury was directed is indicated in the testimony that next follows.)

Mr. ROCHE.—Under the date of Monday, February 3, 1908, which represents a final day of discharge, are the following figures and data:
"Indra.

103 tons, 2210 lbs., yard bunkers; 656 tons, 1990 lbs., offshore bunkers;

6248 tons, 652 lbs., 'Algoa.'"

Making a total discharge from the steamship "Indra" of 7009 tons, 372 lbs. And then in lead pencil is the following: "Short, 268 tons, 1868 lbs." Now, I desire to direct the attention of the jury to that portion of the same diary under the dates of February 11 and February 14, 1908; under date of Friday, February 14, according to the books kept by the defendant Mills, there were taken out of the "Thyra" the following quantities of coal:

"539 tons, 1840 lbs., to the offshore bunkers;

2170 tons, 1461 lbs., to the steamship 'Algoa';

883 tons, 2100 lbs., into the barge 'Melrose';

249 tons, 1490 lbs., into the barge 'Nanaimo'; [779

—721]

888 tons, 1020 lbs, into the barge 'Theobold';

151 tons, 450 lbs. into the 'Shasta';

60 tons, 1390 lbs., into the barge 'Pinole';

96 tons, into the same barge;

70 tons, 120 lbs., into the 'Thyra';

Making a total of 5110 tons, 911 lbs., and a shortage of 69 tons, 1329 lbs."

According to my recollection the coal in the "Algoa" came from the vessels "Indra" and "Thyra." The "Algoa" was used as a storeship. After she was loaded she was towed to Mission Bay. Her hatches were then put on. I do not remember whether I was, or not, on the "Algoa" when she was loaded, or when she had completed loading, but

I do remember boarding her before she was discharged.

Mr. ROCHE.—I suppose counsel will admit that the additional 6248 tons, 652 lbs. of coal discharged from the "Indra" into the "Algoa" and the 2170 tons, 1461 lbs., discharged from the "Thyra" into the "Algoa" makes a total quantity of coal or cargo of coal amounting to 8418 tons, 2113 lbs.?

Q. Do you recall, Mr. Powers, the discharge of the "Algoa"? I don't mean the date, but do you recall the circumstance that she was discharged?

A. I do.

Q. Where was she discharged, if you recall?

A. Discharged while lying at Mission Bay.

I remember some five or six hundred tons being taken out of the "Algoa," but I don't remember whether it was during the year 1908. I don't know the date. After that quantity of [780—722] coal was taken out of the "Algoa," she still lay in the stream, and I boarded her. The hatchways were on and closed. I do not recall whether they were battened down, and I do not remember whether there was a tarpaulin over them. After the quantity of coal hereinabove referred to was discharged from the "Algoa," the hatchways were replaced. I do not recall the date when she next discharged. I do remember that the coal became heated. The coal was not actually burned, however. There was no evidence of that. The coal at the top at the time of the discharge of the "Algoa" was dry, but underneath it was moist, where the coal was heating. The upper

part of the cargo, however, contained less moisture than when the ship had been loaded. The cargo was discharged into the barges. The coal was ultimately discharged from the barges into steamers. I should say that the "Algoa" lay in the stream with this cargo for about from one year to 18 months, not counting, of course, the first discharge of five or six hundred tons. The total period may have been two and a half years, but I think it was 18 months.

- Q. You have had called to your attention a short while ago that there were 8418 tons, 2113 lbs. of coal laden into the "Algoa"; after the "Algoa" had been located in that stream 18 months, or whatever may be the period of time that she was there, with part of that cargo heated in the bottom of her hold, when that boat discharged did she check out more coal in weight than had been discharged into her, or loaded into her? A. I don't know.
 - Q. You do not know? A. I do not.
- Q. Could you refresh your recollection from the books kept by the defendant Mills. [781—723]
- A. Well, as each barge load was hoisted out of it I put that in the book. I did not make the total of the entire cargo and all that was discharged.
 - Q. Who checked the weights up at that time?
 - A. I did.
 - Q. In your own handwriting?
 - A. In my own handwriting.
- Q. Of course there was no customs weigher present at that time, was there?

 A. No, sir.
 - Q. What, if anything, did you do with those

(Testimony of Edward Powers.) weights as they were being taken?

A. I made an entry in the book.

Mr. McCUTCHEN.—This was not weighed for the purpose of delivery to drawback vessels?

Mr. ROCHE.—No, but it was weighed afterward. And I will show just what happened afterward. I will show that there was a still further increase.

- Q. You superintended the weighing, did you not?
- A. I sent the weigher out there.
- Q. And were you present when the coal was being discharged?
- A. I was there off and on. Maybe I would not go there for a day, maybe I would go there once a day or maybe I would go there twice a day.
- Q. The weigher was an employee of the Western Fuel Company, was he not? A. He was.
- Q. And the coal was not being weighed, as Mr. McCutchen has suggested, for the purpose of discharging into any other ship at that time; in other words, it was simply being checked into the barge?

A. It was being checked into the barge for any steamer that called for it.

Q. But what I mean is this,—when the coal was to be checked [782—724] out of the barge it was again reweighed; that is true, is it not?

A. That is true.

Q. So that the weight that was being taken was for the purpose of determining the quantity of coal which was being discharged from the "Algoa" and the quantity of coal put on each barge? A. It was.

Q. Do you recall how that coal was weighed, as

to whether it was weighed by average weights?

- A. Average weights,
- Q. And did you direct that it be correctly weighed?
- A. I did.
- Q. Have you any recollection at all, Mr. Powers, as to whether the weight of that cargo under the circumstances detailed by me and after that cargo had remained in that ship as long as you think it did remain in that ship weighed over or short?
 - A. You mean the steamer itself, the "Algoa"?
 - Q. Yes, the "Algoa"?
 - A. I don't know how it weighed.
 - Q. You don't know how it weighed?
 - A. I never have figured the total amount.
- Q. These figures indicating the weight of the coal taken out of the "Algoa" were sent by you to the defendant Mills?
- A. I made the entries myself, I believe, in that case.
- Q. Do you recall whether you made the entries at the time the first portion of the cargo was removed, the 400 or 500 tons? A. I don't remember.
- Q. I will hand you the diaries for 1908 and 1909; I call your attention to June 3d, 1908, and August 26, 1908; first, I will call your attention to June 3, 1908, when the 500 tons or so were taken out of her. The vessel completed her discharging on the 29th day of June, 1910?
 - A. That is Mr. Mills' writing. [783-725]
- Q. Does the record which you now have and which you say is in the handwriting of Mr. Mills, show a

discharge of any part of that cargo into the barge "Melrose"?

A. You mean on those dates?

- Q. On June 3d? A. Yes, sir.
- Q. How many tons and lbs.?
- A. 316 tons, 779 lbs.
- Q. Now, turn to August 26, 1908. Does it also show there? A. It does.
- Q. On the 26th of August, 1908, there was how much coal taken out of the "Algoa," and upon what barge was it laden? A. 227 tons, 1392 lbs.
 - Q. And that was laden on the barge "Melrose"?
 - A. Yes, sir.
- Q. Now, turn to the diary of 1909, to April 8th, 9th and 10th; those entries may be in your handwriting?

 A. Mr. Mills' handwriting.
- Q. Will you look on April 8th and see whether any coal was discharged from the "Algoa" into any barge? A. On April 8th there was; yes, sir.
 - Q. How many tons?
 - A. That is the addition of April 7th with the 8th.
- Q. Look at April 10th and you will see that it will give the entire addition up to that time.
 - A. Yes, sir.
- Q. Up to April 10th what is the quantity of tonnage discharged? A. 1014 tons, 1335 lbs.
- Q. Now, look at April 24th and see if there is a total there of the coal discharged between April 10th and April 24th. They discharged on three days, April 21, 22, 23 and 24, or between those dates?
 - A. There is.
 - Q. By the way, Mr. Powers, upon what barge was

that last quantity [784—726] of coal laden, on April 10th? A. On the "Melrose."

- Q. Look at April 24th; does it show a still further discharge of coal? A. It does.
 - Q. Into what barge? A. The "Melrose."
 - Q. What quantity? A. 1042 tons, 1125 lbs.
- Q. Now, look at May 21st; it shows the discharge that took place from May 18th to May 21st, into the barge "Theobold"—have you got that entry?
 - A. I have it.
- Q. What quantity of coal was between May 18th and May 21st discharged from the "Algoa" into the "Theobold"?
 - A. If this is the correct total it is 1078 tons, 495 lbs.
 - Q. Is that 495 or 475?
 - A. I believe it is 495—yes, it is 495.
- Q. Now, look at May 24th. The total shows the discharge between May 21st and May 24th does it not, from the "Algoa," and upon the barge "Melrose"?

 A. It does.
 - Q. And what is the quantity of coal?
 - A. 705 tons, 1170 lbs.
- Q. Now, look at June 8th, into the barge "Theobold"; have you that entry? A. I have it.
- Q. Does that show the quantity of coal discharged from the "Algoa" from that barge between June 4th and June 8th, 1909? I would like the record to show, if your Honor please, that I am wrong as to the year. The witness is correct as to the 18 months. These figures occur in 1909, so that the coal was finally discharged in about 18 months. I am refer-

ring you now to June 8th, to the barge "Theobold."

A. It shows here that the barge "Theobold" was loaded full 1078 tons, 495 lbs. on the 4th of June. That shows that they were [785—727] working on the outside on the 8th of June.

Q. It shows what?

A. It shows where she began discharging.

Mr. ROCHE.—The witness has just explained to me that the former balance was carried forward, 1078 tons, 495 lbs.

Q. Just explain that, Mr. Powers.

A. The barge had not been completely unloaded and therefore we carried the barge right on, the loading of the barge and the discharging of the barge, we carried that right on until the barge was fully discharged. Previous to June 8th the barge had discharged into the "Peru" 1028 tons and that left a balance of the difference between 1028 and 1078, and therefore we had to continue that barge and carry her along with us.

Q. Look under the figures you have there and see if there was not 924 tons, 972 lbs. laden on the barge from the "Algoa" in addition to the figures you have already given us.

A. That is correct.

Q. Look at June 12th, the barge "Melrose"; from June 9th to June 12th, the entries appearing on the 12th giving the total, is it not a fact that there was an additional quantity of coal laden upon the "Melrose" from the "Algoa" of 880 tons, 1915 lbs.?

A. There was.

Q. Look at June 23, the barge "Theobold"; have

(Testimony of Edward Powers.) you got that? A. Yes, sir.

- Q. Between the 19th and the 23d there was laden on the barge "Theobold" from the steamship "Algoa" 906 tons, 297 lbs.; is that correct?
 - A. That is correct.
 - Q. Look at June 30, barge "Melrose." A. I see.
- Q. Between June 19 and June 30, there was laden upon the "Melrose," [786—728] from the steamship "Algoa," 1080 tons, 416 pounds; is that correct?
 - A. That is.
- Q. Look on the same day, June 30, the barge "Rough and Ready." A. Yes.
- Q. It is a fact, is it not, that on that date there was discharged from the steamship "Algoa" into the "Rough and Ready" 157 tons, 1486 pounds?
 - A. Yes.
- Q. Now, turn back to June 29, the schooner "Shasta." A. Yes.
- Q. Is is not a fact that there was discharged into the schooner "Shasta" 201 tons, 495 pounds?
 - A. Yes.
- Q. Now, does the record, there, show the total quantity of coal discharged from the steamship "Algoa" and whether there was an overage or a shortage, according to the ascertained weight, that is, the weight on which duties were paid, and which was the quantity of cargo laden into the "Algoa"?
 - A. Not to my recollection. I don't remember.
- Q. Is it shown in the handwriting of the defendant, Mills?
 - A. I will look it up. Maybe I can find it. I did

not give the entire total of the figures. Mr. Mills made that entry after the "Algoa," 6 P. M.

- Q. The words following, "Algoa," appearing under date of Wednesday, the 30th of June, 1909; is that correct?

 A. That is Mr. Mills' handwriting.
- Q. At 6 P. M. is in the handwriting of the defendant, Mills? A. Yes.
 - Q. That is correct? A. Yes.
- Q. And the last two entries that have been given by you to me? A. That is my handwriting.
 - Q. The last entries are in your handwriting?
- A. All the rest of those entries are in my handwriting. [787—729]
- Q. Those two entries to which you have last referred, are all in your handwriting? A. Yes.
- Q. And represent the weight of the coal discharged from the steamship "Algoa," and laden into these barges as reported to you by the weigher?

 A. Yes.

Mr. ROCHE.—Now, will you admit, subject to correction, what the addition is, when I give you the total?

Mr. KNIGHT.—What is the total?

Mr. ROCHE.—The total which I have is 8,535 tons, 657 pounds, but there is a mistake of 20 pounds; it ought to be, assuming that the figure "9" is correct, instead of "7," 677 pounds.

Mr. KNIGHT.—We make it 8,145.

Mr. ROCHE.—This includes the discharge on June 3, and August 26, 1908; the total is 8,535 tons, 657 pounds.

Mr. McCUTCHEN.—Subject to correction, that will be admitted.

Mr. ROCHE.—Subject to correction, may it please the Court, it is admitted that the out-turn weight from the steamship "Algoa" is 8,535 tons 657—that ought to be 677 pounds, with that corrected figure, and an overage of 116 tons, and with the corrected 20 pounds, it would be 804 pounds; that is after the coal was in there about a year and a half.

(Witness continuing.) I did not see any evaporation in that cargo during that time. I know nothing about that. I did not see it. When the coal thus discharged from the "Algoa" into the barges was again weighed out of the barges and into the vessels for fuel purposes, there was an overage from a barge in every instance. I cannot testify as to the quantity of overage without reading from the book. I finally left the services of the Western Fuel Company during [788—730] the month July, 1911. I have not worked for that company since.

Cross-examination by Mr. STANLEY MOORE.

I testified that I went to work as a timekeeper in the trimming for Mr. Mills and my father about twelve years ago. I have been away from San Francisco on two different occasions, once during the time that I was working down there as dumper before my brother came there.

Q. Well, about how long, as nearly as you can remember, prior to the time that your brother came down there, had you, yourself, been down there working as a timekeeper in connection with the trimming of coal?

A. On some of the ships, the Spreckels boats, I was

(Testimony of Edward Powers.) there at the same time he was there.

(Witness continuing.) He might have been keeping time, and I was watching the chute, or going over the bunkers, weeding out the men, or I might have been keeping time for them when they checked off. It was not exactly a timekeeper's job; we had other work, such as watching the coal go down the chute, there—he was there at the same time I was there. I do not remember how long I had been down there before my brother came down there. I am 29 years of age, and my brother is, I think, about 25 or 26. Mr. Mills had the contracts in regard to the coaling of these vessels at the time when I was working as timekeeper in connection with trimming the coal. The Western Fuel Company had the contracts for the actual furnishing of the coal. John Rosenfeld's Sons preceded the Western Fuel Company. The majority of the coal loaded into the Spreckels boats was loaded from inshore on the track, from the company's own bunkers, that is, the Spreckels Company's own bunkers. The other vessels were [789— 731] loaded from barges. I remember the "Ludlow," the "Corsair" and the "Nanaimo" as barges then in use, and there was one other, the name of which I have forgotten. The "Corsair" has since been condemned. The "Ludlow" is to-day abandoned. I do not remember whether I myself worked for the Rosenfelds or not. I think I was dumping coal on the barge when the Rosenfelds was there. The man who was enagaged in dumping the coal had to be up in the frame work over the hold. He might

be 10 or 12 feet, or 35 or 40, according to the height of the ship, but the majority of the discharges were low, about ten or twelve feet. On the "Theobold" a man still has to assist in the tripping of the buckets; but with respect to the other barges, the buckets are now automatically tripped.

I was first a dumper, then a hatch-tender, and then a foreman of the barge. The hatch-tender is the man who is highest in authority upon a particular barge. I don't know how long I was hatch-tender. We used to run extra gangs of men when there was a pressure of work. I used to be hatch-tender for the extra gang. We very seldom, however, used more than the two regular gangs. I don't remember when it was that I became [790—731½] a regular hatch-tender.

The speed with which the buckets go up depends, as I have heretofore testified, on a variety of circumstances, among others, the height to which the buckets are hoisted, the ability of the men in the hold, and on the engineer. Most of the ships require only a low hoist. The "Manchuria" and the "Mongolia" are up high, and the buckets would have to go, I should judge, about 25 or 50 feet to get up to the tripping place. The speed with which the buckets go up, depends, as I have said, upon the engineer. If he is nervy, he brings the buckets up and lets them down as fast as he can. The hatch-tender gives the signal for the bucket to start. It is pulled slowly until it gets clear of the barge; then he gives another whistle, and the bucket comes a good deal faster. The

speed with which the buckets go up also depends upon the condition that a particular bunker may be in, that is, on whether the bunker is comparatively empty or comparatively full, for instance. When you commence a bunker the work goes very fast, but toward the end it goes slower. On the "Melrose," which has an automatic discharge, you can hoist about three tubs to two minutes. The hatch-tender and the different gangs do not work at the same rate of speed. Some are faster than others, just as one man may talk faster than another, and it also depends upon the engineer and sometimes the weigher.

BE IT REMEMBERED that thereupon the following testimony was given and that the following proceedings occurred:

Q. Now, when a weight is to be taken, you testified, as I understood you, that more time is allowed, the men have more time to fill those tubs; is that correct? [791—732]

A. They have. Still, when it is going slow, you are discharging on to a ship that is taking it very slow, they have lots of time, too; sometimes as much as ten or fifteen minutes.

Q. But we are speaking, now, of the conditions not at the very close of the filling of the bunker, or toward the end, where everything is in the clear, so to speak, and the buckets are going up like three in two minutes. Under those conditions, as I understood your testimony, in answer to Mr. Roche, the men have no more time when a round of weights is called for, with

respect to the filling of the buckets, than they do under those other conditions that the buckets are going up every two-thirds of a minute, or something of that kind? A. Yes.

- Q. Now, what do you call that proposition, what is the term for it?

 A. For what?
- Q. The scientific term, if you can call it such, for this proposition of meeting that cable that comes down. A. Meeting the hook.
 - Q. That is called meeting the hook, is it?
 - A. Yes.
- Q. The matter of meeting the hook is something that keeps the men going at full speed, or at speed all the while, is it, while the buckets are coming up?
- A. For instance, the tub is lowered, and the men, they alternate from one side to the other, he unhooks it and throws it over and the other man has to be there to meet it.
- Q. But when these buckets are to be weighed, four of them in a round, there is a little more time in the nature of the work in which to fill up these buckets, according to your testimony?
 - A. There is. [792—733]
- Q. Now, who is it calls for the weights, or determines when buckets are to be weighed?
 - A. Well, the weigher.
- Q. That is, the custom-house weigher, the representative of the Government that you refer to?
 - A. I do.
- Q. And you say that he says, "Put her on the scales," or "On the scales"?

- A. Something like that.
- Q. And that is all that you ever heard said?
- A. By the customs weigher, yes.
- Q. What does the hatch-tender say?
- A. He hollers down, "Pat," or "Mike," or whoever it is, to come up on deck.
 - Q. Pat or Mike? A. Or Tony, or anyone.
- Q. Whatever his name may be, it has got to be somebody, has it not, on board these barges, and under most of the conditions? A. Yes.
- Q. And those scales upon those barges, as I understood your testimony, are of two varieties; there is on some of them what you term a hanging scale, and upon others what you speak of as a platform scale, is there not? A. Yes.
- Q. Well, now, if that piece of carpet, there, which is directly in front of you, should be considered as the hatch, and the hatch is longer across the barge than it is lengthwise, of the barge, isn't it?
 - A. Yes.
- Q. Well, say this is the bow of the barge, and that is the stern of the barge, and this is the hatchway.
 - A. Yes.
- Q. And this where I am standing is the deck of the barge? [793—734] A. Yes.
- Q. Whereabouts would this hanging scale be located that you have referred to, with reference to the hatch, that carpet, as I say, being taken as the hatch?
- A. Well, on the "Nanaimo" and "Comanche" it would be hanging from one corner of the hatch—

- Q. (Intg.) Well, then—
- A. (Continuing.) Swinging out about a foot from the hatch,—not the hatch, but swinging out a foot from the side.
- Q. And which side would that be, with respect to the side of the hatch that was nearest to the ship, if there is any connection in regard to that?
- A. On the "Nanaimo," it would be nearest the ship, and on the "Comanche" it would be offshore, away from the ship.
- Q. If the ship was lying here, on one of these barges, it would be hung over this corner of the hatchway, would it not?
 - A. Yes, that is the offshore, the "Comanche," yes.
- Q. When he gets Bill, or Mike, or Tony, or whatever his name may be, on deck, what is done then?
- A. Well, not in this case, they don't call them; they call them upon the "Theobold," and these barges, the "Melrose" and "Ruth," on the platform scales.
- Q. Is it only with respect to the platform scales that the men are sent up? A. Yes.
- Q. Whereabouts is the platform scales located with respect to the hatch?
 - A. It is right on the outside of the hatch, offshore.
- Q. If that would be the end of the hatch, then it would be there on the deck of the barge?
- A. A little away, and then they move it to the center. [794—735]
- Q. They move it to the center of the space at the end of the hatch?
 - A. It is right in the middle of the hatch.

- Q. But it rests on the flooring, does it not?
- A. It rests on the deck of the barge.
- Q. Now, how do they get the buckets to the platform of the scales?
- A. Well, he yells to the engineer "On the scales," and the engineer comes ahead slowly until they reach the level of the scales, the platform of the scales, and he draws the tub toward him, and lets it go back again, and when it comes back again so that the men can get it, they grab the tail, that is a rope on each side of the tub—and put it on the scales, and at the same time the hatch-tender is pulling on the rope.
- Q. In other words, when the engineer gets that tub swinging on the end of the cable out from the hatch, then they grab hold of the tails, as you call them, and swing the thing back and forward, until it gets swinging, and comes clear over to where the platform scale is, and then they land it upon the scales?

 A. Yes.
- Q. That is the object and the purpose of calling up Mike, or whatever his name may be, from the bottom of the hold below? A. Yes.
- Q. Now, what, if anything, has the custom weigher the right to do or say with respect to the amount of coal that may be in any particular bucket when he calls for a weight?

 A. He can refuse to take it.
 - Q. He can refuse to take it? A. Yes.
- Q. In other words, if it is overflowing with coal, or represents more than an average of the buckets that are passing up between [795—736] times, he has the right to refuse to take it, or ask that the coal be shoveled off until there is only left on it such coal

(Testimony of Edward Powers.)
as represents the average of the buckets that have
passed up between times?

- A. He could do that.
- Q. Haven't you seen that? A. Once or twice.
- Q. Haven't you seen them do that on barges that you were connected with, Mr. Powers?
 - A. I have seen them do that.
- Q. Now, so far as their putting more coal in these buckets is concerned, the stevedores putting more coal into buckets is concerned, at the time the weights are called for, than at other times, have you ever told the stevedores to do anything of that kind?
 - A. I have not.
- Q. Has anybody ever asked you at any time, Mr. Powers, while you were in the employ of the Western Fuel Company, while you were a hatchtender, or while you were an assistant superintendent, has anybody ever asked you or instructed you to tell the stevedores to do anything of that kind, that is to say, to put more coal into the buckets when a weight was to be taken than when they were going up without weight being taken?
 - A. Not that I remember of.
 - Y. Not that you remember of. A. No.
- Q. Don't you think that if anybody had ever said anything of that kind to you, that you would recall it? A. I think so.
- Q. And do you remember now of any occasion as long as you were connected with that company when anything of that kind was ever said to you?
- A. I was never told to tell them to underload the tubs, no. [798—737]

- Q. Were you ever told to tell them to overload the tubs at any time when a weight was to be taken?
 - A. I was never told to.
- Q. Is it not a fact, Mr. Powers, that Mr. Mills used to say, whenever any of these matters would come up, or complaints come up, that he did not want any trouble over there, or not to have any trouble over there?
- A. He would say not to have any trouble over there—yes, he said that.
- Q. And is it not a fact that you heard him say to the hatch-tenders and to yourself to keep the tubs even?
- A. Yes, sir, when the custom-house weighers were standing there, yes, sir.
- Q. You do recall him saying that in the presence of the custom-house weighers, do you not? A. I do.
- Q. And in what position with the company were you at that time, Mr. Powers?
 - A. I was assistant to Mr. Mills.
- Q. When he would talk to you about not having any trouble over there, referring to trouble on the Mail Dock, was he not talking about the keeping of the tubs even, if that is the expression that is used?
- A. Well, a complaint came in about one of the hatch-tenders. That is the reason it was said.
- Q. A complaint came in about one of the hatchtenders. A. Overloading the tubs, yes, sir.
- Q. Do you recall from whom that complaint came in?
 - A. It came to me from several customs weighers.

- Q. It came to you from several customs weighers.
- A. At several different times. [797—738]
- Q. And you reported that complaint to Mr. Mills, did you not? A. I did.
- Q. And it was in connection with that, that Mr. Mills stated to you that he did not want to have any trouble over there, was it not? A. It was.
- Q. And do you remember when that was, Mr. Powers, or about when it was?
- A. Yes, sir, I remember the time that the barge ran short close after that; that is how I remember it.
 - Q. Can you fix about the year that it was?
 - A. I guess about 3 or 4 years ago.
- Q. And these hatch-tenders were under you at that time, were they not,—you were assistant superintendent then?

 A. Under both Mr. Mills and I, yes.
- Q. And when these complaints came in to you from the customs weighers you reported them to Mr. Mills, did you not? A. I did.
- Q. And it was in that connection that this conversation that you have testified to occurred.
 - A. It was.
- Q. Do you remember at this time the name of the hatch-tender about whom the custom-house weighers had complained to you? A. Yes, Dan Pallas.
- Q. He was one of the hatch-tenders that was working for the company at that time. A. He was.
- Q. And what, if anything, did you say to the customs weighers at the time that they complained to you about Pallas?
 - A. Oh, I passed it off; I didn't say much to him.

- Q. Did you have any conversation with Pallas?
- A. Well, I told Pallas not to have any trouble with the weighers.
- Q. Did you not tell Pallas, Mr. Powers, to try to keep the tubs [798—739] even?
- A. The remark I made to Pallas was to have no trouble with the customs weighers.
- Q. There is an expression you use about keeping the tubs even, is there not? A. There is.
- Q. What is the meaning or significance of that expression?
- A. Well, I suppose it means to keep the tubs filled when going on the scales as when they were not being weighed.
- Q. What you told Pallas was not to have any trouble with the weighers, was it? A. It was.
- Q. And you made that statement to him before you reported the matter to Mr. Mills, did you?
 - A. I did.
- Q. And did you also make it to him after you reported it to Mr. Mills?
 - A. I thought once was sufficient.
 - Q. You say you thought once was sufficient?
 - A. I did.
- Q. Do you remember receiving any complaints in regard to Pallas after you told him not to have any trouble with the weighers?
 - A. I think we received more complaints, yes.
- Q. Do you recall as to whether you spoke to him again about it, or spoke to Mr. Mills again about it?
- A. I don't remember whether I reported it again, or not.

- Q. You don't remember that, do you, whether you reported it again, or not? A. No.
- Q. You testified this morning in answer to Mr. Roche, that Mr. Mills said to you, "Well, the Government is doing the weighing," or something of that kind; do you recall that testimony? A. I do.
- Q. And Mr. Roche said that that was the excuse that you gave and you said that that was a true excuse; do you remember that? [799—740]
- A. Yes, and that was the truth, the custom-house was weighing it; I said the statement he made was true.
 - Q. They were weighing those tubs, were they not?
 - A. They were.
- Q. So far as any discrepancy in the tubs is concerned, Mr. Powers, is it or is it not your opinion that it is due to that particular system of weighing that the Government itself through the custom-house follows, and not to any fault so far as the Western Fuel Company is concerned, or any of its employees.

Mr. ROCHE.—One moment. We object to the question as calling for the opinion of the witness.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

- Q. To what do you attribute the fact, Mr. Powers, if it be a fact, that the tubs that are weighed have some more coal in them than the tubs which are not weighed?
- A. Well, I attribute that to the fact that they have more time to put it in.
 - Q. Is it not a fact then that you would attribute it

to that system of weighing down there?

Mr. ROCHE.—That question is *object* to, may it please the Court, as calling for the conclusion of the witness.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

- Q. When a weighing is taken whereabouts is the first tub that is called for as a general rule at the time when the custom-house man hollers out "On the scales"?
- A. It may be in the air or it may be in the process of being dumped or it may be in the hold of the barge.
- Q. Often times the first tub is in the air, is it not? [800—741]
- A. Oftentimes it is in the air, yes; not in the air coming up but in the air coming down.
 - Q. In the air coming down? A. Yes, sir.
- Q. And all four of the tubs are not already filled at the time he may call for a weight, are they?
- A. They are not; as I have already stated, one tub is filled ready to meet the hook.
- Q. Then it may be at a time when the customhouse man calls for a weight and when the four tubs are weighed in succession—it might be that only one tub at that time is completely filled.
- A. Well, there may be two; it is according to the kind of men you have there. The whole three of them may be filled if they are close to the hatch.
- Q. At all events, Mr. Powers, what is the general state of affairs there at the time the custom-house

man calls for a weight with regard to how many of the tubs are then full?

- A. There is generally one full.
- Q. There is generally one full, and there may be two full.
 - A. Yes, and there may be three full.
- Q. Is it or is it not a fact then that one or two or even three sometimes of those tubs are in process of being filled when you call down for the man to come up or when the hatch-tender calls down below for the man to come up and this maneuvre is gone through with it with regard to putting the tub upon the scales? A. Yes.
- Q. And while the custom-house weigher is taking that first weight some of those other tubs at least are still in the process of being filled? A. Yes, sir.
- Q. And is that in part what you have reference to when you say that the stevedores then have more time with regard to the filling [801—742] of the tubs than when they are engaged in meeting the hook?
 - A. They certainly have more time, certainly.
- Q. And if they keep on working throughout that time the natural result of that operation is, in your opinion, that there will be some more coal in those particular tubs as to which they have more time than would have been the case if there had only been the time allowed them on that tub which was necessary to enable the tub to take its turn in the meeting of the hook.

Mr. ROCHE.—We object to that question upon

the ground that it calls for the conclusion of the witness.

The COURT.—That is the same thing that you have proved yourself, that when they have more time down there they put more coal in.

Mr. ROCHE.—I think that is quite obvious if the Court please, if the man continues his work, if he continues to work.

The COURT.—It is only putting it in another form; it is another one of those instances of putting it in other words.

Mr. STANLEY MOORE.—Q. Well, how many different times, Mr. Powers, have you heard Mr. Mills say that he did not want any trouble over there, over there at the Mail Dock?

Mr. ROCHE.—That question is objected to upon the ground that it assumes something that the witness has not testified to. The trouble that the witness referred to was trouble with the customs weighers.

The COURT.—I suppose that is what counsel refers to also.

Mr. STANLEY MOORE.—Yes, your Honor, that is it.

Mr. ROCHE.—But that is not the question.

Mr. STANLEY MOORE.—It may be a distinction without a difference. The objection I think is very finely spun anyway. He said this morning that Mr. Mills said he did not want any trouble. [802—743] over there, and in speaking of it this afternoon he added the words "with custom weighers." I will ask him this question:

Q. Do you remember more than once Mr. Mills saying he did not want any trouble over there, or with the customs weighers, or whatever it was he did say?

A. Whenever the customs weighers started in kicking or started in objecting to the way they were loading the tubs and I told Mr. Mills about it he would tell me not to have any trouble over there.

- Q. And how often would that be?
- A. Whenever they would watch them close enough.
- Q. I beg your pardon,—what is that?
- A. I say whenever they would catch them doing it?
 - Q. How often would that be?
- A. I have had complaints from different weighers over there, several different weighers.
- Q. You were assistant superintendent, Mr. Powers, for a matter of four years; do you recall how often you reported things like that to Mr. Mills and he would say to you he did not want any trouble over there?
- A. Quite a few times; I do not remember the exact number of times.
- Q. I know—and you could not be expected to remember the exact number of times, but do you remember whether or not Mr. Mills has said that half a dozen different times?

A. He said that quite often, and he also said that the weighers were cranky, and they had something or there was something the matter with the weighers;

he made that remark, he said they would kick at anything.

- Q. Well, whether they were cranky, or not, or they would kick at anything, or not, he used to say he did not want to have any trouble over there? [803—744]
 - A. He said that several times, yes, sir.
- Q. Do you know whether he said it half a dozen times?
- A. I don't remember whether he said it half a dozen times or whether he said it 12 times or three times.
 - Q. You cannot remember?
 - A. I cannot remember, no.
- Q. And when you would report these matters to him, he would say that, would he not?
- A. He said that several times when I reported the matter to him, yes, sir.
- Q. Whether the customs weighers were cranky, or not, they had the absolute right, as you understood it, to say how that weighing should be proceeded with, did they not?
 - A. So I understood, yes, sir.
- Q. And is it or is it not the fact that whatever the customs weighers said with regard to weighing, the employees were supposed to comply with it?
- A. They were supposed not to have any trouble with them.
- Q. And if a custom-house weigher claimed that he would not take a certain bucket or tub for weighing, it had to go on up into the ship without being

(Testimony of Edward Powers.) weighed, did it not? A. Yes, sir.

Q. And if a custom-house weigher claimed that certain other buckets represented more of an average of the buckets that were coming up they would be weighed instead of the ones that had first been offered, would they not? A. They would.

(Witness continuing.) Generally, when we were discharging barges at night, electric lights were supplied by the steamship company, that would throw the light into the hold of the barge. There were also the box lanterns belonging to the Western Fuel Company. [804-745] The electric cluster was arranged as the hatch-tender or the custom-house weigher wished it to be. Usually that was in such a way that it would throw the light down into the hold of the barge. I would put one of the box lanterns in each wing of the barge where the men would be working, and also one in the hoist so that the engineer could see on each trip the proper time for dumping the tub. The light sometimes went out. In such event they went on the work just the same so long as the box lanterns were lit. If a man were standing right at the hatch of the barge, he could thus, with all the lights going, see how the tubs were loaded as they ascended.

- Q. When a barge starts to unload they make for what they call the skin of the barge, to get the skin, do they not?
 - A. That is the bottom of the barge, yes, sir.
- Q. What does that mean? The barge when it comes alongside a ship may be full of coal clear up

to the level of her decks and even above, may she not?

- A. Some barges.
- Q. In all of them the hold is full of coal?
- A. It is.
- Q. And they make to work down there to get to the floor of the barge, do they not?
- A. To get to the 'tween-decks; there is a 'tween-deck in some of them.
- Q. Well, anyhow, Mr. Powers, they make for a floor; they want a solid foundation from which to work, do they not? A. Yes, sir.
- Q. And then they have what they call the brake, haven't they?

 A. The brake?
- Q. When they get down clear to the floor of the barge there is a pile of coal going up on either side; say that is the hatch-way, [805—746] they get right down to the bottom of the barge, down to the floor there, don't they? A. Yes, sir.
- Q. Then there is a solid wall of coal coming out on either side on a slant, is there not?

 A. There is.
- Q. And each one of these buckets is set upon wheels, is it not? A. It is.
- Q. And if this is the floor of the barge, and there is a bank of coal, after they have gotten to the skin, as you call it, they wheel the bucket over and tilt it at the same time so that it slants head in to that pile of coal, do they not? A. Sometimes.
- Q. When that point is reached, Mr. Powers, is not that what they call the brake?
- A. That is when they have the run of coal. At times they lift the coal from the deck.

- Q. What do you mean by that?
- A. When the drop of coal is gone naturally they must lift it from the deck.
- Q. But when they have that floor they work either way, do they not; that is to say, they work backward toward the stern of the barge and they work this way toward the bow of the barge?
- A. And sometimes into the wing of the barge until they clear the hatch.
- Q. In other words, Mr. Powers, they work clear across the barge until they clear that hatch and the floor that is directly beneath the hatch, do they not?
 - A. They do.
- Q. And they obtain a clear working space within which to move about those four buckets that are set on wheels, consisting of the entire flooring of the barge itself that corresponds with the opening that is formed by the hatch?
- A. After they dig down into the barge and clear the 'tween-decks they do, yes, sir. The 'tween-decks contain about 120 or 130 [806—747] tons of coal on some of the barges, the "Melrose" especially.
- Q. Then when they have got down there the great majority of the coal is still on board the barge, is it not, that is, consisting of the part that goes clear back to the stern of the boat and also the part that goes clear forward to the bow?
 - A. There is about two-thirds of it left, yes, sir.
- Q. And then the flooring they have cleared away beneath the hatch, they run the buckets around on the wheels there and tilt them against the bank of

(Testimony of Edward Powers.) coal on either side, do they not?

- A. At times they do and at times they pick it from the floor, shovel it from the deck.
- Q. I know, but when they get that clear down to the floor of the barge itself to the 'tween-decks, if there is a 'tween-decks on a particular barge, and get that space cleared off right down to the bottom of the barge, that is, within the confines of the hatchway, what is the usual method of procedure with respect to the filling of the buckets?

A. They do what they call scooping two tubs by turning the mouth of the bucket in toward the pile of coal and scooping it in and then straightening it up and shoveling in about 20 shovels full, 10 or 20 shovels full, and then they keep on doing that. If they keep scooping the coal down they have the run of it down and then they have to shovel the tub full then so that they can get in and have another run or a brake, as you call it.

- Q. Do they only scoop a couple of tubs and then after that is it all shoveled full?
- A. They scoop two or three tubs and then shovel a tub.
 - Q. And then what do they do?
- A. And then they scoop again and then shovel again.
- Q. And then scoop again and shovel again, and so on; is that it? A. Yes, sir.
- Q. And generally two buckets are working back toward the stern and two are working toward the bow, are they not? A. Yes, sir.
 - Q. And that is the position they are generally in,

(Testimony of Edward Powers.) or at least three of them might be in, when a weight is called for by the custom-house weigher?

A. It is.

- Q. The men keep on shovelling, do they not, just where the bucket might happen to be?
 - A. Until it is filled, yes, sir.
- Q. How much does a shovel full of coal weigh, according to your opinion, I mean the shovels that were used on that work; just give us an offhand opinion.
 - A. 10 or 15 lbs.
- Q. If there was even a couple of shovels full put into a bucket that was to be weighed more than had been put into a bucket that was not to be weighed, a considerable difference would be made with respect to the out-turn weight of the entire barge, would it not?
- A. It would if it was a shovel full of lumps. They may pick up a large lump and place it on it.
- Q. Even a single lump that may be put in a bucket in addition to the amount of coal in a bucket that was to meet the hook would make a considerable difference in the eventual out-turn of the barge, would it not? A. It would make some difference, yes, sir.

(Witness continuing). I was never employed on the bunkers by the Western Fuel Company. Occasionally, however, I went to the offshore bunkers with the barges when they went there to be loaded. I would be [808—749] aboard the barges, which would be accompanied by one or more of the barge men, who would make her fast and handle the lines. When I answered "No" yesterday to the question

whether I upon occasions remained with the barge when it would be taken over to the offshore bunkers of the Western Fuel Company for the purpose of being coaled, I was mistaken. I had forgotten. Last night on thinking the matter over I came to the conclusion that I had occasionally gone over with the barges to the offshore bunkers when they went there for the purpose of being loaded. I don't remember whether or not I testified vesterday that I had been on top of the bunkers while the barges were loading, but that I did not remain there until they were finished. That is the fact, however. So far as the weights that went into the barges were concerned, I secured them only at such exceptional times as Mr. Mills would be away on his vacation, or on occasions when I happened to be on the track and Mayer would ask me to take the weights down to Mr. Mills. would not happen very frequently. My work with Mr. Mills was to do what I was told. In answer to the question whether as assistant superintendent my work was concerned with the unloading of these barges, I would say that my work was to do as I was told. He sent me on top of the bunkers to look after things; he sent me on the barges and on the wharves and to get trimmers. I was not employed to do any particular work on top of the bunkers, but still, if Mr. Mills asked me to do anything there I would do it. I have been up on the bunkers quite often. did not ordinarily have anything to do with the putting of coal in the barges. The bulk of my work consisted in unloading the barges, or shifting the barges

about from ship to ship. I had, under the direction of F. C. Mills, charge of the barges the crews of the barges and the hatch-tenders while I was assistant [809-750] superintendent. I never shifted barge or put her alongside a ship, however, without Mr. Mills's orders to do so; or, in the absence of Mr. Mills, without the order of Mr. J. B. Smith. I gave the orders to the hatch-tenders or to the foreman of the barges. I would go out to the Mail Dock or in the stream, or wherever the barges might be working, more often than Mr. Mills, but Mr. Mills was there twice a day or sometimes more. I was a regular or steady hatch-tender working upon different barges. I cannot remember exactly how long it was that I had the steady gang, that is, the second gang, on the barges. I was only handling the third gang when I became assistant superintendent. I think it was about a year that I was hatch-tender of one of the regular gangs; it might be more, and it might be less. That year was, I think, from seven to nine years ago. I can't remember what particular year. Maybe I was a regular hatch-tender a little more than a year. I cannot say how many years I had had something to do off and on with the unloading of barges. I think it was several years. I cannot remember when I first commenced to tend hatch. have already answered the question to that effect. cannot remember how long after the Rosenfelds were gone it was that I first commenced to tend hatch. do not think I ever tended hatch while the Rosenfelds were there. I cannot remember when I first

(Testimony of Edward Powers.)
commenced tending hatch for the Western Fuel
Company.

Q. Now, then, do you mean to be understood as testifying to this Court and jury that there was any wrongful action on the part of those stevedores in the filling of those buckets or in the loading of those buckets that were hoisted during the discharge of those barges?

* * * * * * * *

A. I do.

Q. And what is it? [810—751]

A. Well, for the reason the report was rendered F. C. Mills and J. B. Smith every day stating that the barges had overrun, sometimes as high as 10, 20 and 30 and as high as 35 per cent, over what was loaded into the barges; therefore it showed conclusively that it was fraudulent, didn't it?

Q. I am questioning you, Mr. Witness. I am asking you what you saw there. Did you see anything down there, either during the time that you were acting as hatch-tender yourself or afterwards during the time that you were acting as assistant to the superintendent, leaving aside the Mills' books—perhaps they will be come to later—and confining you now to what you saw down there, what you observed, what did you see down there that you claim was wrongful action on the part of those stevedores?

A. I have already testified to the tubs, when they were weighed they were overloaded.

Q. Did you see them doing that?

A. Well, I seen them when I was standing on the

deck of the barge, and the tubs was going up, and when they were in the process of being dumped, and there was not as much put in them as when they were put on the scales. And Mr. F. C. Mills standing on the deck saw it with me.

- Q. Do you claim that they were overloaded intentionally and deliberately, by those stevedores?
 - A. In some cases, yes.
- Q. Was that true, Mr. Powers, while you were acting as hatch-tender there? A. It was.
- Q. And how many cases did you observe of that kind during the time that you were employed as a hatch-tender for this company?
 - A. Numerous times.
- Q. Numerous times. Did you ever tell the stevedores to do that? [811—752]
- A. I told them to fill the tubs up, to keep them well filled.
- Q. You told them to fill the tubs up and keep them well filled, did you not? A. I did.
- Q. You have told them that time and time again, have you not?

 A. I told them quite often.
- Q. And hasn't Mr. Mills told you to tell these stevedores to fill the tubs up and to keep them filled up, and well filled?
- A. Mr. Mills has not told me to fill the tubs up and keep them well filled. On the transport dock, Mr. Mills told me to underload the tubs—on the transport dock, not on the Pacific Mail Dock.
- Q. Well, did you tell the stevedores, then, of your own volition, and without suggestion from him, to

keep the tubs filled, and to keep them well filled?

- A. I told them to put coal in the tubs when they went on the scales, plenty of coal.
- Q. You said to them, Mr. Powers, to fill the tubs and to keep them filled, and not only to keep them filled, but to keep them well filled?
- A. On the Pacific Mail Dock, when the weighers objected to the method, Pallas and some more had of weighing the tubs, I did, but I am speaking of the transports—Pallas and Wilson, the present hatch-tender—
 - Q. I am not talking about that.

Mr. ROCHE.—I submit, may it please the Court, that the witness has a right to give an answer to the question, and counsel has no right to interrupt him when he is saying something which evidently hurts the other side.

Mr. MOORE.—This witness testified yesterday that he never had said anything one way or the other about the stevedores— [812—753]

The WITNESS.—On the Mail Dock.

Mr. MOORE.—(Continuing.) Or the hatch-tenders, either about keeping the tubs even, or keeping them filled, and now he admits that he did tell them that and told them that frequently.

The WITNESS.—I said on the Mail Dock, when the customs weighers objected. I am speaking of on the transports at the present time. The fact, the hatch-tenders that were then there and are now there, Dan Pallas and Frank Wilson, were in the employ of F. C. Mills before I took that position, and un(Testimony of Edward Powers.) doubtedly they had received their instructions the same as I, from F. C. Mills.

- Q. We are examining you now, Mr. Powers, about your testimony yesterday, in regard to the Mail Dock. Now, you are trying to get in something else, and perhaps we will get around to that.
- A. Will you specify it as to the Mail Dock, and I will answer according to what you ask?
- Q. Yes. You were talking about the Mail Dock yesterday, were you not? A. I was.
- Q. I am talking about the Mail Dock now. Did you or not testify yesterday that all you had said to the crew down there, or the hatch-tender, was not to have any trouble with the weighers? A. I did.
- Q. And did you not testify that is all I said, not to have any trouble with the weighers?
- A. I did, on the Mail Dock, but once or twice Mr. Mills—I told the weighers, under instructions of Mr. Mills, he says "Those barges are running kind of short." I told the hatch-men, I said, "Dan," or "Frank," or whoever it might be, "These barges are running a little short; don't let that occur again." I never told them to overload them, but I told them that. [813—754]
- Q. Did you or not testify yesterday that all you had told the hatch-tender down there was not to have any trouble with the weighers? A. I did.

Mr. ROCHE.—Just one moment. That question is objected to on the ground that the evidence speaks for itself.

Mr. MOORE.—It does not matter if it does.

The WITNESS.—What is the question?

(Last question repeated by the reporter.)

A. I did.

- Q. Now, then, didn't you testify yesterday that that was all you said?
- A. That is all I remembered yesterday, yes; I remember that now.
- Q. Well, didn't I ask you yesterday if you said anything to them about keeping the tubs even?
 - A. You did.
- Q. Did you remember then that you had told the people down there at the Mail Dock to fill the tubs and to keep them well filled?
- A. I didn't tell them that; I didn't answer that yesterday; I didn't answer in that way. I think I said nothing concerning the tubs, or the answer I just made that I told them the barges were running short, and don't let it occur again.
- Q. Haven't you testified here, within the past fifteen minutes, that you told them down there at the Mail Dock to keep the tubs filled, to fill the tubs and to keep them well filled?
- A. No, I did not tell them that. I told them not to have trouble with the weighers.
- Q. I am asking you not what you did or did not tell them, Mr. Powers, but didn't you testify here, within the past fifteen minutes, that you had told them down there at the dock to fill the tubs and to keep them well filled?
- A. I might have told them when the custom weigher was standing [814—755] there, and mak-

(Testimony of Edward Powers.) ing objections to the loading of them.

- Q. Didn't you testify here not fifteen minutes ago that you had told them that down there time and again? A. I did not say time and again, no.
- Q. Didn't you say that you had told them that down there a number of times, or many times?
- A. I might have told them a number of times; I told them whenever the weigher kicked, which was quite frequently.
- Q. Did you not remember that you had told them that down there, whether it was whenever the weighers kicked, or whether frequently or not—did you remember down there at the Mail Dock you had said to the hatch-tender, or to the crew, to fill the tubs and to keep them well filled—did you remember that when I was asking you the questions?
- A. I told them not to have trouble with the weigher; that is the same as telling them to fill the tubs and keeping them well filled.
- Q. Whether it was the same or not, didn't you undertake to testify yesterday that those words you used, "I told him not to have trouble with the weigher, and that is all that I said"? A. I did.
- Q. Were you not asked yesterday as to whether you had said anything in regard to keeping the tubs even or not? A. I may have.
- Q. Now, were you not asked yesterday as to whether you had said anything to the stevedores about having the tubs filled when they were to be weighed, and later when they were not to be weighed—do you remember that?

- A. I had nothing to do with the stevedores; the hatch-tender had the stevedores; he was the foreman.
- Q. But did you say it to the hatch-man? [815—756] A. Say what?
- Q. That the tubs were to be filled fuller when they were to be weighed than when they were not to be weighed?

 A. No, I did not tell them that.
 - Q. You did not tell them that?
 - A. I did not tell the hatch-tender, no.
- Q. Well, then, you said that either to the hatchtender who was, so to speak, the foreman of the gang, or the stevedores, themselves; you said that to either one or the other, to fill the tubs up heavier when they were to be weighed?
- A. No. I told them the barges were running short, they were not running to a large enough percentage to suit them.
- Q. You told them not to let the barge run short again? A. I did.
- Q. Well, how many times did you tell them to fill the tubs and keep them well filled?
 - A. Whenever the weigher kicked.
- Q. Did you mean to testify to that this morning, that you had ever said that, or did it escape from you accidentally?

 A. Testify to what?
- Q. That you had ever told them to fill the tubs, or to keep them well filled?
- A. The hatch-tender, if the weigher was objecting very much, I might have told them to; I guess I did tell them to keep them well filled while the weigher was standing there.

- Q. The question is, did you intend to testify to that this morning, that you had told them that at any time? A. I did.
- Q. Did you remember that, as a matter of fact, you had so stated to them—did you remember that yesterday at any time? [816—757] A. I did.
 - Q. Then why did you not testify to it?
 - A. I believe I stated that this morning.
- Q. Why did you not testify to it when you were asked in regard to it yesterday?
- A. To what? I don't know what you're speaking about. If you speak slowing I may understand you better.
- Q. Very well; didn't you understand me yesterday?
- A. What is the question? I will answer the question.
- Q. The question is, when you were asked yesterday in regard to what you said to the hatch-tenders, why did you not testify to it?
- A. I answered the question that you asked yesterday, didn't I?
- Q. Now, just a minute. You asked me to speak slowly. Let me finish the question. I want to give you the question fully so that you will not misunderstand it. Why didn't you testify then that you told them to fill the tubs and keep them filled?
- A. The question asked me yesterday was, did I tell the hatch-tenders to overload tubs or underload them, wasn't it?
 - Q. Yes, but didn't I ask you also what you said to

(Testimony of Edward Powers.) the hatch-tenders when complaint came in?

- A. I don't remember whether you did, or not.
- Q. Don't you remember that I did, and don't you remember that you said to the hatch-tender not to have trouble with the weighers?
 - A. Yes, I remember that.
- Q. And don't you remember whether I asked you whether that was all that was said, or not?
- A. I don't remember that you asked me whether that was all, or not.
- Q. And don't you remember answering loudly, yes, I told them not to have trouble with the weighers, that is all?
- A. I told you I told them not to have trouble with the weighers, [817—758] but I don't remember making any other statement.
- Q. You don't remember of saying that, and then saying, and that is all you did tell them?
 - A. No, because it was not.
- Q. You said that the complaint had come in, or a complaint had come in, in connection with a hatch-tender by the name of Pallas, did you not, this Dan Pallas you speak about? A. I did.
 - Q. You recall testifying to that, do you?
 - A. I do; I said several complaints, not one.
- Q. Well, you afterwards put in several, but at the time I am reading of now you said, "Well, a complaint came in about one of the hatch-tenders," and later on you said it was Dan Pallas. Do you remember at this time the name of the hatch-tender about whom the custom-house weighers had com-

(Testimony of Edward Powers.)
plained to you? A. Yes, Dan Pallas.

- Q. And it was in connection with that you testified that Mr. Mills stated to you he did not want to have any trouble over there? A. It was." Is that correct, Mr. Powers? A. That is correct.
- Q. And you were asked if you had any conversation with Pallas and you answered, "Well, I told Pallas not to have any trouble with the weighers." That was the answer you made as to what you had told Pallas, not to have any trouble with the weighers, was it?

 A. It was.
- Q. And then you were asked this question, Mr. Powers, and you made this answer: "Q. Did you not tell Pallas, Mr. Powers, to try to keep the tubs even?

A. The remark I made to Pallas was to have no trouble with the customs weighers."

Do you remember that question and that answer? [818—759]

Mr. ROCHE.—Now, if the Court please, I object to that question upon the ground that the testimony is entirely in accord and consistent with the evidence given by him this morning.

Mr. STANLEY MOORE.—Your Honor, please, we object to that objection.

The COURT.—And I suppose there is a counter objection to that. The objection is overruled. That does not mean your objection, Mr. Moore; the objection to the question is overruled.

A. I do. That was on one occasion. I may have stated the other on another occasion.

Mr. STANLEY MOORE.—Well, we may come to that later. I want to read you a little more. "Q. There is an expression you use about keeping the tubs even, is there not? A. There is. Q. What is the meaning or signficance of that expression? A. Well, I suppose it means to keep the tubs filled when going on the scales as well as when they are not being weighed." Do you remember that answer?

A. I do.

Q. "Q. What you told Pallas was not to have any trouble with the weighers, was it not? A. It was." Do you remember giving that testimony?

A. I do.

Q. Did it not come into your mind then, Mr. Powers, when you were asked about keeping the tubs even, which you yourself know means keeping them filled on the scales and off the scales while they are going up there on the side of the vessel, that you had stated to the hatch tender to fill the tubs and to keep them well filled?

A. I told him in the presence of the weigher to fill the tubs, [819—760] yes, sir.

Q. And did you tell him in the presence of the weigher to keep them well filled? A. I may have.

Q. You say you may have? A. Yes.

Q. If you did tell him that, to fill the tubs and to keep them well filled, it meant, so far as the meaning of the words themselves were concerned, at least, that the tubs should be kept even, did it not?

A. It was said for effect on the weigher, to satisfy him.

- Q. Well, without regard to that, Mr. Powers, and asking you to give your attention, please,—is not that the equivalent of saying to keep the tubs even?
 - A. Yes.

Mr. STANLEY MOORE.—Q. And when that question was asked you about keeping the tubs even

question was asked you, about keeping the tubs even yesterday, you know what that expression meant, taking it on its face value, did you not? That it meant keeping them filled?

A. I did.

- Q. You testified that you had a conversation, did you not, at the office of Mr. McCutchen and Mr. Olney, at which I and Mr. Norcross were also present?
 - A. You were.
 - Q. What was that conversation?
- A. Do you want me to start from the inception of Mr. Norcross asking me to go down there?
- Q. Start with the conversation, so far as I am concerned, the conversation itself in the office, at which I and these gentlemen were present.

A. They told me that they were rather puzzled about the overages in the barges and asked me if there was any reason or excuse for it. [820—761] I told them there was a possibility. Then I went on to state that the barges, as I have already stated here—

Mr. STANLEY MOORE.—Q. (Intg.) Just give your own words.

A. (Continuing.) That the barges, when we were discharging them, when they were coming up—when

the buckets were coming up without weighing them, there was not as much in them as when they went up on the scales. Then they asked me if the men benefited by that and I told them yes, that they benefited by it.

Q. Are you finished?

A. And Mr. McCutchen told me that if I was asked that question, to answer it, if the prosecution asked me the question to answer it.

Q. To answer what?

A. To answer to the truth, to answer the question; if they asked me if I had been up to McCutchen and Olney's office.

Q. Have you related all of the conversation so far as you can remember?

A. There is some more I cannot recollect just now. That was the main point.

Q. Have you now related to us the substance of the conversation? A. I have.

Q. Do you remember whether anyone said in the course of that conversation or at the beginning of it, that they wanted you to tell everything that you knew?

A. They did not. They asked me the reason for the overage of the barge. They did not ask me to tell everything I knew. It was concerning that that I went down there for, as David Norcross stated when he asked me to go down there.

Q. Do you remember Mr. Olney stating to you, in substance and [821—762] effect that he wanted you to tell everything that you knew down there?

- A. No, sir.
- Q. To tell the whole business? A. No, sir.
- Q. To tell all that you knew about the business of the company?
- A. No, sir, he did not, so help me God! He never said it.
 - Q. Did he say that in substance or effect?
 - A. He did not.
- Q. Did he use the expression, "I want you to tell the whole thing"?
- A. He asked me concerning the barges and the overage, nothing about the bunkers or any other part of the work whatsoever.
- Q. Did he say to you, "I want you to tell the whole thing"?

 A. He did not.
- Q. Did he say to you that he wanted you to tell everything you knew? A. He did not.
- Q. Did he say to you that he wanted you to tell whether anything was wrong down there?
 - A. He may have asked that, I don't remember.
 - Q. Don't you recollect whether he did, or not?
- A. No, I don't remember whether he did ask that, or not.
- Q. Don't you recollect that he did say, "Now, if there is anything wrong down there I want you to tell us about it and tell us all about it"?
 - A. I don't think he did.
- Q. Do you state positively, Mr. Powers, that he did not?

 A. I don't think he did.
 - Q. The question is, do you testify here, as a matter

of fact, that he did not make that statement to you?

- A. I said I don't remember him making it.
- Q. And was not that right at the commencement of that conversation? [822—763]
 - A. I don't remember him making it.
- Q. Don't you remember his saying to you, "Now, if there is anything that is wrong down there I want you to tell us about it"?
 - A. I don't remember him making that statement.
- Q. Do you remember his saying to you, "Was there anything wrong down there, and if so, what was it"?
- A. I answered the question you asked before; I said I don't remember his making that remark or statement.
- Q. Do you remember him saying that the only thing was in regard to the loading of the barges and that was not really wrong?
- A. He asked me about the barges, how they overrun, and I have already stated the answer I had given him.
- Q. Do you remember saying the only thing was about the loading from the barges?
 - A. No, I don't remember that.
- Q. Do you remember saying down there that when the buckets were going up without a weight being taken there was about three-quarters of a minute between buckets? A. I do.
 - Q. You remember saying that?
 - A. I remember saying that, yes, sir.
- Q. What else do you remember saying in regard to the manner and the method of the loading and

(Testimony of Edward Powers.) weighing and hoisting of the buckets?

- A. I stated it took a minute or three-quarters of a minute to discharge a bucket without weighing it, and that it took from 3 to 4 minutes to weigh the buckets.
 - Q. You remember that, do you?
 - A. I remember that, yes, sir.
- Q. And what, if anything, further did you say in connection with [823—764] those circumstances, that it took three-quarters of a minute for the buckets when they were going up and more time when the buckets were to be weighed?
- A. You asked me if it benefited the shovelers in the hold, and I told you it did, that they had more time to fill tubs.
 - Q. You said they had more time to fill tubs?
 - A. I did.
- Q. Do you remember having said anything else than that? A. Not that I recollect.
- Q. Can you think a moment and see whether that is all that you said in regard to that subject?
- A. I may have said more, I don't recollect just now.
- Q. Well, don't you remember whether you did, or not, with respect to the filling of these tubs, or the weighing of these tubs, or the loading of them by the stevedores, or as to whether or not there was any wrong conduct in it?
- A. I don't recollect that. I told you that when they went on the scales they were overloaded and

(Testimony of Edward Powers.) when they went up without being weighed they were underloaded.

- Q. Do you remember saying anything about the human element?
- A. I said it may be human nature to take advantage of anything; for instance, the 3 or 4 minutes it took in weighing, and they were there to meet the hook.
- Q. You do remember, do you not, that you said something about human nature and about meeting the hook? A. Yes, sir, I do.
- Q. Did you forget that a moment ago when I asked you about it?
 - A. I am stating that I remember it now.
- Q. But I say when I asked you the question a moment ago, did you forget about it then. [824—765]
- A. It did not come to my mind; if it did I would have answered it.
- Q. Well, what if anything, did you say in regard to the human nature element and in regard to taking advantage?
- A. I said the men would shirk the work if they were not forced—that is to say, if someone was not standing over the hatch telling them to fill the buckets all the time, and if the hatch-tender was not always after them they would not fill the buckets. That is what I told you.
 - Q. You remember that, do you? A. I do.
- Q. Do you remember as to whether or not you said there was anything wrong done down there?

- A. Not on the part of the shovelers.
- Q. What did you say about that?
- A. I said it was only human nature to make the work as light as possible, speaking of the shovelers in the hold.
- Q. Then speaking of the shovelers in the hold, Mr. Powers, did you use any expression about whether there was anything wrong, did you use that word in regard to that?
- A. I may have: I know there was nothing wrong with the shovelers.
- Q. Without regard to what you may have used, Mr. Powers, don't you remember whether you did use that term?
 - A. What term is that?
 - Q. The word "wrongful."
 - A. I don't remember using it.
- Q. You have no recollection either one way or the other with respect to that? A. No, sir.
- Q. Have you testified to the whole of that conversation so far as you have any recollection concerning it? A. I have. [825—766]
- Q. Do you recall now as to whether anything was said in the course of that conversation with reference to whether or not anybody had ever given any instructions to you or had ever asked you to do anything wrong?
- A. You asked me—one of the gentlemen asked me if J. B. Smith ever told me to overload tubs or underload tubs, and they asked the same question about Mills; that question was asked.

- Q. And what did you say?
- A. I said I received no instructions from them to overload or underload tubs.
- Q. Do you recall as to whether or not a question was asked of you as to whether during that time that you were connected with that company, Mr. Mills or anyone else had ever asked you to do anything that was wrong? A. I do not.
- Q. Do you testify now that no such question as that was asked of you?
- A. Not that I remember, and I am pretty sure it was not asked me.
- Q. Do you testify positively that that very question in substance and effect was not asked of you, and almost in those very words?
 - A. I have answered the question.
 - Q. Is your answer positive that it was not?
 - A. The answer to the question covered that.
- Q. Well, does it cover it positively, or not, or are you undertaking to answer it simply, as you state, to the best of your recollection?
- A. I answered to the best of my recollection in the answer.
- Q. Mr. Powers, have you now related all of that conversation?
 - A. There may be more but not that I recollect of.
- Q. Can you not think for a moment and see in your own mind [826—767] whether or not in fact there was more? A. I stated there may be more.
 - Q. Do you recollect now any more?

- A. I have stated I do not.
- Q. Do you remember saying anything in regard to this system of weighing as a system of weighing?
 - A. Yes, sir, I did.
- Q. Did you not remember that until I recalled it to you?
 - A. I did not; if I did I would have answered it.
- Q. What, if anything, did you say in that regard?
- A. I told you it was a very poor system and that that was party responsible—partially responsible—for these overages.
- Mr. STANLEY MOORE.—Q. Was that all that you said about the system of weighing?
 - A. I believe so.
- Q. And you say that you said it was a very poor system and that it was partially responsible for the overages; is that what you said? A. I did.
 - Q. Did you use the word "partially"?
- A. I may have used the word "part," part responsible.
- Q. Did you use the word "part" or "partial" or some word of that same class or meaning?
 - A. I believe I did.
- Q. How long have you remembered this last part of the conversation, the part that I am now questioning you about with respect to the system of weighing?
- A. Just when you asked the question and prompted me I remembered it.
- Q. It had gone out of your mind, had it, until I spoke to you about it just a moment ago in the ques-

tion that I put to you? A. It had. [827—768]

- Q. Does it come back into your mind clearly and distinctly that in speaking about that system of weighing, that there was a partial responsibility for the overage, and that you used the word "part" or "partial"? A. Yes, sir, it does.
- Q. Are you able to testify now, with the recollection that has just come to you, positively and unequivocally that that word "part" or "partial" or some word of similar meaning or import was in fact used by you?
- A. I am pretty sure it was, otherwise I would be very foolish to give the statement to you that 35 per cent overage was on account of that.
 - Q. Did you make that statement to me too?
- A. No, I did not make that statement then, I am making the statement now that that percentage would be a very foolish statement to make.
- Q. Well, I am not going to argue with you about that now. I am trying to find out what you stated down there, and without regard to these other matters that you are bringing up now. The question is, Mr. Powers, do you positively recall, so that there can be no mistake about it in your mind, that in connection with this system, of weighing and the responsibility for the overages, you used the word "part" or "partial" or some word similar in meaning?

A. I believe I did.

Mr. STANLEY MOORE.—Is it not a fact, Mr. Powers, and that you told us, that the system of

(Testimony of Edward Powers.)
weighing—the system of Government weighing down
there was what was responsible? [828—769]

- A. I said partly responsible, I believe. That is the answer you wanted, wasn't it?
- Q. Didn't you say it was solely responsible, either in substance or effect? A. No.
- Q. You say that that is the answer we wanted, did you not? A. Yes.
 - Q. Were you giving us the answers we wanted?
- A. Yes, I gave you that answer; that was the answer you wanted. Norcross said that is the reason you wanted me down there, as an answer to that, and that is the reason I gave it to you.
- Q. Were you giving such answers as we wanted? Is that the reason that was answered in that way?
- A. I said that that was partly responsible, and that was very true.
- Q. I said was that your purpose in going down there, to answer the questions as you thought we wanted them answered.
- A. Well, I answered that I thought that was partly responsible.
- Q. You thought that partly responsible would be more satisfactory to us than saying wholly responsible, did you? A. I did, which was true.
- Q. You were not sincere then in the statements you made to us at that time?
- A. As sincere as you were in calling me to your office when you knew I was a Government witness.
- Mr. STANLEY MOORE.—We move to strike that out if your Honor please.

The COURT.—Let it go out.

Mr. STANLEY MOORE.—Mr. Reporter, will you read the question?

(Question repeated by the reporter.)

- A. Well, I was sincere in stating that that was partly responsible [829—770] for it.
- Q. Well, generally speaking, was your attitude one of insincerity upon that occasion?
 - A. Well, no; not exactly.
- Q. What, if anything, did you hope to gain by any attitude of insincerity assumed with respect to us, if you did assume it, what was your object and purpose in that? A. Nothing.
- Q. In what answer that you made to us down there were you purposely and knowingly insincere?
- A. I have just answered that question as to what I said there, by saying that it was partly responsible.
 - Q. You say that was the truth, don't you?
 - A. Partly responsible; yes, is the truth.
- Q. Then, were you insincere in making that answer? A. Not in making that statement.
- Q. In making what statement was it that you were insincere?
- A. I was not insincere; I did not say I was insincere.
- Q. Well, you put it it was the answer you wanted, wasn't it? What did you have reference to when you said that?
- A. What did you bring me to the office for? You didn't bring me down there to tell you there was fraud, did you?

- Q. We will come to that later, Mr. Powers, whether we did, or did not. What was your object in giving to us answers you thought we wanted? What was your object in it?
 - A. I was trying to let you down easy.
 - Q. You were trying to let us down easy, were you? A. Yes.
- Q. And that was all the object or purpose that you had? A. It was. [830—771]
 - Q. It was a mere polite courtesy? A. Yes.
- Q. That in your sensitiveness you were extending to us? A. It was.
 - Q. That is about the substance of it, is it?
 - A. It is.
- Q. Now, you have testified here a moment ago, that when you said the overage was partly to be accounted for by the system of weighing, you said that was the answer you wanted, wasn't it? A. Yes.

Mr. STANLEY MOORE.—Q. I will ask you this question: What did you have reference to in saying that that was the answer that we wanted, if it was the truth?

A. Well, Mr. Moore, it is just like this: I might say just now "I don't like you," and I might have in my mind something else; and it was the same in that case.

Q. And perhaps it would be the same in the other case too, but without regard to that, Mr. Powers, you were thinking in your mind something else, were you, when you were making those answers down there?

- A. No, I gave you that answer to the question, which was true.
- Q. You said here, perhaps I would make one answer to you and I would be thinking in my mind something else; what, if anything, did you have in your mind, what object or purpose did you have in replying to us as you did if you were replying insincerely?
- A. No object at all; I had no object at all in replying to you in that way.
- Q. Do you claim that Mr. Olney was insincere when he asked you to tell the whole business, to tell everything you knew, if he asked you that? [831—772]
 - A. He did not tell me that, he did not ask me that.
- Q. Do you remember his saying anything to you or anybody saying anything to you about wanting the truth? A. I don't remember that, no.

Mr. STANLEY MOORE.—Q. I want to ask this further question: Do you claim, Mr. Powers, that you misstated anything in that conversation?

- A. The statement I made as to the custom of weighing was partly responsible, is true; I did not make any misstatement to that effect.
- Q. Without reference to that particular answer, do you say that you misstated anything in that conversation?

 A. Not that I remember of.
 - Q. Not that you remember of? A. No.
- Q. Was not the conversation in substance and effect this— * * * that Mr. Olney stated to you

that we wanted you to tell everything, all about the whole business, what went on down there, and to tell the truth; do you remember that part, or any part of it?

- A. I do not. I remember about him asking me about the barges and the overages in the barges.
- Q. And if there was anything wrong down there, and whatever there was wrong down there, to tell it; do you remember that?
- A. There was no remark made about that at all. He had asked me about the cause of the overage or the overruns in the barges.
- Q. Do you remember saying that the only thing that was wrong there was in regard to the loading from the barges?
- A. You were asking me concerning the barges, were you not?
- Q. No, but do you remember making that answer? [832—773] A. What answer is that?
- Q. That the only thing that was wrong was in connection with the loading of the barges?
 - A. With the loading of the barges?
- Q. With the loading from the barges, I mean, the coaling of the vessels?
 - A. I never made that remark.
 - Q. Didn't you make that remark? A. No.
- Q. Do you remember saying that that was not really wrong, or that that was the fault of the system?
- A. I said the system was partly responsible. I have answered that before.

- Q. You remember saying, do you, or do you remember saying that there was nothing wrong so far as the Western Fuel Company was concerned?
 - A. I do not; I could not have said it without lying.
- Q. Well, without regard to that, or your question of sincerity, or whether you would lie, do you remember as a matter of fact that you did say it?
 - A. I did not say it.
 - Q. You did not say it? A. I did not say it.
- Q. Do you remember saying that there was nothing wrong so far as the employees of the company were concerned in connection with the loading of the buckets? A. I do not.
 - Q. You did not say that? A. No.

Cross-examination by Mr. OLNEY.

Mr. OLNEY.—Q. Mr. Powers, referring to this occasion when you came into the office of McCutchen, Olney & Willard and there met Mr. Moore, Mr. McCutchen and myself, I will ask you if you did not have this conversation with us and if I did not [833—774] say to you, "Mr. Powers, we want to know the truth about this matter"?

- A. You asked me concerning the barges.
- Q. I will repeat the conversation to you, and then I want an answer, yes or no, from you in regard to it: If I did not open the conversation by saying to you, "Mr. Powers, we want to know what the truth is about this matter, is there anything wrong or was there anything wrong down there in connection with the loading of the vessels, or anything that you know about down there on the waterfront,"—and did you

not say, "Yes, there is something wrong"; and did we not then ask you what was it which was wrong, and did you not then reply to us that the thing which was wrong was that the buckets were heavier loaded when they were weighed than when they were not weighed?

- A. I stated that that was partly responsible.
- Q. And did we not ask you in response to that statement how that came about and how it was done, and did you not then say to us, didn't you go into an explanation and say to us, among other things, or say to us primarily as the explanation that the buckets when they were not being weighed came up at the rate of less than one minute and that when they were weighed it would take 3 or 4 minutes to weigh them or to weigh one, and that the men in the hold were being driven all the time to meet the hook, as you phrased it— A. (Intg.) At times.
- Q. (Continuing.) And that it was all they could do to load the buckets when they were going up fast in order to meet the hook?
 - A. At times, I said.
- Q. And that when the weighing took place they had more time and they loaded the buckets heavier in that manner; and did we not [834—775] ask you if that was done intentionally and you said, "No, it is simply an incident of the business"; and did we not ask you in that connection, were any instructions given or was there any understanding that the buckets which were to be weighed were to be

weighed heavier, and did you not answer, no; and did you not also, in response to that question say, "It is simply the human element of these men trying to meet the hook"; and did we not then say to you, "Why, there is nothing fraudulent or wrong about that"; and did you not say, "No, that was simply the human element"; and did we not then ask you, "Was there anything else wrong down there that you saw," and did you not say, "No, there was not"; and did we not then ask you, "Were any instructions issued," or in the course of the conversation did we not ask you if any instructions were issued by Mr. Mills or by anybody else, or was there any understanding in regard to this matter, or in regard to anything wrong down there, and did you not say, "No"9 A. Part of that is true.

- Q. And part is not true?
- A. And part is not true.
- Q. Will you pick out the parts that are not true?
- A. I said the system was partially responsible; I did not tell you that I had not received any instructions from Mr. Mills.
 - Q. You did not? A. No.
- Q. And you limited your answer to the fact that the system was only partially responsible?
 - A. I did.
- Q. Is there anything else in the conversation that is untrue? A. That is all I remember.

Cross-examination by Mr. STANLEY MOORE Continued.

I have been unemployed for about a year. I have

been [835—776] under subpoena by the Government for a number of months, receiving, as I understand, witness fees while I am in attendance on court. During the past year I have been unemployed but during part of the time I have been working for my father painting his house. Otherwise, I have had no employment in that period. I made a few trips to sea since I left the Western Fuel Company in July, 1911. I was deck engineer on the "Manchuria" for one trip. I also made a trip on the "San Juan." Those two trips occupied about five months. Also, since I left the Western Fuel Company I have done a little stevedoring on two or three ships, probably 15 or 20 days' employment all told. That was a couple of years ago. I now live with my father at 720 Harrison Street. My brother lives at the same place. I have observed him to come into the court-I haven't talked to him to any extent since the recess yesterday. We haven't been friendly for a number of years. Aside from my duties with the Fuel Company as assistant superintendent in June and July, 1911, I was also conducting boxing and sparring exhibitions at the Dreamland Pavilion in conjunction with a brother of Mr. J. B. Smith.

Mr. STANLEY MOORE.—Q. In connection with that, Mr. Powers, did that have anything to do with your leaving the fuel company?

A. Yes, that was partially responsible for my leaving the fuel company.

- Q. You use the word "partially." A. Yes, sir.
- Q. Was not that stated to you as being entirely

(Testimony of Edward Powers.) responsible? A. It was not.

Q. Did you leave voluntarily?

A. Well, I left the books there and I left the office and didn't [836—777] show up for three or four days. Do you want me to go on and explain how I left the fuel company?

Q. You might explain that matter to us, yes.

A. Mr. Mills owed me money, and he still owes me money. I went to the office there and he spoke very nicely to me; he had \$80 coming to him for trimming; I had the money and I kept it because he owed it to me. That led to a dispute. I said I would see Mr. Smith about it. He made the remark that if I went he should go with me. I went to Mr. J. B. Smith and told him the trouble and he said to me, "Go back, Eddie." I said, "Mr. Mills and I had a quarrel down there"; he said, "It doesn't matter whether you and Mr. Mills had a quarrel, or not, you go back." So I went away and went back. Mills and I had another quarrel and I left. I sent word in to Mr. J. B. Smith that I wanted to see him, but he wouldn't see me. That is how I came to leave the Western Fuel.

Q. Do you consider that you left them voluntarily and of your own accord?

A. Well, I left the books in the office there,—I knew what I was doing when I left them for 3 or 4 days without anyone being there. That is partially voluntary.

Q. Do you consider it a case of resigning or of being discharged?

- A. Mills asked for my resignation.
- Q. You have been referring to it all the time as the time when you left the Fuel Company.
 - A. Well, I am not there now so I must have left.
- Q. At the time you left there was a quarrel between you and Mr. Mills, was there not?
 - A. There was.
- Q. Have you not said since that Mills had lied about you to Mr. Smith?
 - A. He did to other people.
- Q. And that he had knocked you to Mr. Smith? [837—778]
- A. He did. I don't know whether he knocked me to Mr. Smith,—he knocked me to other people. I have no knowledge of what he said to Mr. Smith. Mr. Smith never spoke to me until he saw me in the corridor when the trial started and he had the "How do" then.
- Q. You're bringing that in too. Speaking about your leaving the Fuel Company back in 1911, have you not stated to people that Mills had lied about you to Smith? A. I did.
- Q. Have you made the statement—and many times, Mr. Powers,—that if it were not for F. C. Mills you would have your job down there to-day?
- A. I may have made some such remark as that. I said Mills was the cause of my getting out of there.
- Q. Have you not said time and time again that if it were not for F. C. Mills you would have your job down there to-day?
 - A. I made the remark I would not have been out

of there except for F. C. Mills; I never made the remark I would be there to-day only for F. C. Mills.

Q. Don't you recall, Mr. Powers, that as a matter of fact you have made that remark?

A. No. There have been enough around asking me, but I never made that remark.

Q. Without anybody being around or asking you, or having to ask you about it, have you not stated it upon numerous occasions?

A. I have stated that I would never have left there only for F. C. Mills.

Q. And if it had not been for F. C. Mills, the question I am trying to have you answer is, have you not stated that you would be in the job to-day?

A. I don't think I ever made that remark. I may have made that [838—779] remark. The remark generally was made that I got out of there on account of F. C. Mills. I believe Dave then went in with Mills. I don't know what he went in as. I never went around the place again.

Mr. Tidwell has said something to me with respect to a reward. He asked me to tell him something about the Western Fuel Company, and I refused; and he went on to state that there was a reward offered for any informer, and I told him neither he nor the United States could make an informer of me; that is the stand I took. That conversation took place in January or February of 1913; it may be December. He only spoke to me once about the matter of a reward. He didn't speak to me on that subject in August, 1913, at the time when my brother

(Testimony of Edward Powers.) and Mr. Tidwell had some trouble.

Mr. MOORE.—Q. Then I will ask the question: Do you remember meeting a man by the name of Mike Carroll on Saturday?

A. You bet; every time he came up Third Street he had an eye around looking for me, and he said, "J. B. Smith would not do that, Mr. Mills and Mayer might do it, but J. B. Smith is an honest man." Every time he saw me he said that. I know Carroll.

Q. Then you remember that?

A. I remember, I never made any remark like that. The only thing, he was full of whiskey, and he was saying, "J. B. Smith was too honest, he would not do anything like that. Mills and Mayer, the dirty thieves, might do it, but J. B. Smith was all right." I will give you a few more conversations, if you want them.

- Q. We will come to those, Mr. Powers, but you are through with Mr. Carroll now, are you, for the present?

 A. He had better not come near me.
- Q. Do you remember having any talk with him about the reward in August? A. No, I do not. [839—780]
- Q. Do you remember meeting Carroll in the month of August?
- A. I met him—every time I looked around I saw him.
- Q. Do you remember looking around and seeing him in the month of August?
 - A. I believe I seen him very near every other day.

- Q. He is a teamster, isn't he, for the Fuel Company?
- A. Darned if I know what he does, he rides in a buggy.
- Q. I will ask you, Mr. Powers, if it is not the fact that you met him on the 9th of August?
- A. I don't remember. I have met him I think every once in a while.
- Q. Didn't you tell him that the prosecution was having a row with your brother Dave?
 - A. I did not.
 - Q. All right.
- A. He told me, he says, "I see by the papers that Tidwell, that dirty stinker, is having a row with your brother"; he says, "That fellow is only doing it for his own reputation, to hold his job, he don't care for you or your brother."
- Q. Then, the subject did come up between yourself and Mr. Carroll at that time, did it?
- A. He made the remark, I never did; I just laughed at him.
- Q. That row between Tidwell and your brother was on the first of August of last year, was it not?

A. I don't know when it was.

Mr. MOORE.—Q. Now, don't you remember from the circumstance of Mr. Carroll speaking about the row between Mr. Tidwell and your brother, and what he said respecting Mr. Tidwell, that you did meet Carroll in August of last year?

Mr. MOORE.—Well, I will ask you this question, Mr. [840—781] Powers: Isn't it a fact that on the 9th day of August, 1913, you met Mr. Carroll on Third Street, and that you told him that Mr. Tidwell had subpoenaed you as a witness, and that he had promised you a good percentage of the moneys they would get from the Western Fuel Company?

A. Oh, Mr. Moore, that is absurd; that is a lie; it is a downright lie of Carroll. When he came up there, the only words he had, the only remarks he made was downing Tidwell, and boosting J. B. Smith. That is all that Carroll could say, and he could hardly say that, he was so full of booze every time I seen him.

- Q. Are you through? A. It looks that way.
- Q. And that after saying that Tidwell had promised you—
 - A. (Intg.) I did not say it, Mr. Moore.
- Q. I want to finish the question, Mr. Powers, then you can answer it once and for all: And that after saying that Mr. Tidwell had promised you a good percentage of the money they would get from the Western Fuel Company, didn't Mr. Carroll ask of you, "Do you think you are going to make a killing?" and did you not say, "He promised it to me," and that you had said to Mr. Tidwell that you had a job to go to sea, but that Mr. Tidwell had told you not to worry, that you would remain here and get a percentage of that money?

A. Mr. Moore, Mr. Carroll won't meet me on the street and tell me that; Mr. Carroll lies.

- Q. Just answer the question. A. No.
- Q. Yes, or no. A. No.
- Q. Did you say that in substance?
- A. I did not.
- Q. Nor in effect?
- A. I did not in substance nor in effect, either.
- Q. Is any part of that conversation which I have just related to [841—782] you true?
 - A. It is not.
- Q. Has anything that has been said to you true—did you tell Mr. Carroll that you had a job, about going to sea?
- A. I did not. After I made the trip to sea I seen Carroll; I never seen him before.
- Q. In August, 1913, did you say anything with respect to a job going to sea?
- A. I was under subpoena, here, how could I go to sea? No, I did not.
 - Q. You did not? A. I did not.
- Q. Was anything ever said between you and Mr. Tidwell, or you and your brother, with respect to any job or positions in regard to either you or him?
 - A. No.
 - Q. Nothing of that kind?
 - A. Nothing of that kind.
- Q. Or anything in regard to that after this case is over? A. Not a thing.
 - Q. Not a thing? A. No.
- Q. You have now related to us all that has been said as between you and Mr. Tidwell in regard to any reward?

- A. Well, when Mr. Tidwell told me there was a reward and he got his answer, he never broached the subject again.
- Q. Now, Mr. Powers, have you and your brother talked any in regard to the reward, so far as he was concerned? A. No.
- Q. Have you ever asked anybody if they thought that Dave would get a reward out of it?
 - A. Not that I remember of.
- Q. Do you remember asking anybody within the last couple of days? A. Not that I remember of.
- Q. Do you state positively that even since the time your brother has been called as a witness here, in the very hallroom leading [842—783] to this court, you have not asked people whether they thought he would get a reward? A. I have answered that.

Mr. MOORE.—Q. Haven't you asked it, for example, of Mr. D. C. Norcross, secretary of the Western Fuel Company, in the hallway to this courtroom, since your brother quit the stand?

A. Asked him what?

Q. If your brother Dave would get a reward?

A. The only remark that he made,—Norcross took me down and had me have a lemonade with him, and Norcross says—and he has repeatedly said, every time he has seen me, "Don't you think that Mills took that coal out of these pockets and didn't charge it on the barge—don't you think that, Eddie"? He has asked me that every time he has seen me. I never made a remark concerning that to Norcross,

and yet Mr. Norcross has told me "After the trial is finished, we will take care of you; I would like to tell you what J. B. Smith has said, but I will tell you when the trial is over."

- Q. Have you ever asked him for a position?
- A. I have not.
- Q. Did you suggest that you would like to have a position with the company? A. I did not.
- Q. Did you ever ask anybody down there to recommend you and get you a position?
- A. I did not. I asked Mills for a recommendation; he said he would go with me personally, and would recommend me, but he would not give me any written recommendation.
- Q. When was it that you asked Mr. Mills to endeavor to secure you a position?
- A. When he would pay me \$20 a month that he owed my father, [843—784] one day when I met him to receive the \$20.
 - Q. When was that? A. A few months ago.
 - Q. It was within the last few months?
- A. I don't know when; it was a couple of months ago; I don't remember just exactly how long—it is not within the last two months, for he hasn't paid the last two months.
- Q. Was it since you have been subpoenaed as a witness in this case?
- A. Mr. Mills met me down in the corridor leading to the street, or in the hallway leading to the street, and said, "I know what you can do, but what is the use, what is the use." I felt sorry for the old man.

Q. The question is, Mr. Powers, since you have been subpoenaed as a witness in this case, and without regard to whether or not you felt sorry for the old man, have you asked the old man to recommend you for a position?

A. I have not, excepting at the time I told you I met him, I asked him for a recommendation, and he said, "Yes," but in the meantime he did not send it to the right place I asked him to send it to, and I telephoned to him, and he said he would go with me any place "you want to, any time, Eddie, and recommend you personally."

Q. Was that since you were subpoenaed as a witness in this case?

A. I have been under subpoena the last year.

Q. Can't you fix the month without regard to this money that you say was owing to your father by Mr. Mills, can't you fix the date when it was that you asked Mr. Mills to endeavor to secure a position for you?

A. I think it was about four months ago; I think it was. I will tell you, he was going to some meeting at the Wells Fargo [844—785] Building, at Second and Mission the same day, I believe.

Q. Do you remember whether or not it was August 3d?

A. It was about the 3d of August; he generally paid one or two days afterwards.

Q. Was it after the prosecution had had the trouble with your brother Dave?

- A. I think it was, yes.
- Q. Whenever that was, August 1st—we will take it as of August 1, 1913, did you telephone to Mr. Mills to meet you somewhere about August 2d?
- A. I telephoned to Mr. Mills; I will tell you how I telephoned to Mr. Mills. Mr. Mills paid me \$20 at Second and Folsom Streets. I went to him, and he says, "My wife is sick, and I have not got money enough to get something to eat," and he went right on with that cry, and I went to my father and I says, "The poor fellow is sick, and has got no money," and he says, "All right." So, I telephoned to Mr. Mills, and Mr. Mills came to Second and Folsom Streets, and I says, "Mills, you can take the money for you two hungry people."
- Q. When was it you asked Mills, the poor man, after you met him on the street?
 - A. After that.
 - Q. How long after that?
- A. I don't remember exactly. I don't remember dates.

Mr. MOORE.—Q. Isn't it the fact that on or about August 1st or 2d you telephoned to Mr. Mills to meet you on the street, I think close to the Wells Fargo Building?

- A. No, Second and Folsom Street.
- Q. And that you said to him that your brother was now out of the prosecution, and that you wanted him to get you a job? [845—786] A. I did not.

- Q. Did you say that in substance or effect?
- A. I did not say it at all, in any way.
- Q. Did you then and there ask him to recommend you for a job, or endeavor to secure a job for you?

A. His recommendation would not be much.

The COURT.—Answer the question.

A. No.

Mr. MOORE.—Q. Isn't it a fact that you asked Mr. Norcross not once, but a number of times, for a job with the company? A. I did not.

Q. Isn't it a fact that he told you he could not discuss or consider any such thing as that with you, or have anything to do with it? A. He did not.

Redirect Examination by Mr. ROCHE.

Mr. ROCHE.—Q. Mr. Powers, how frequently did you come in contact with Mr. D. C. Norcross since the date on which you severed connections with the Western Fuel Company, in July, 1911?

- A. I met him at the Grand Jury room every time the Grand Jury was meeting, that I was subpoenaed, and while this trial is on, he comes out in the hall every day and speaks to me.
- Q. Has he been friendly with you during the past few months?
- A. Every time he came out of the courtroom here, he says, "Wait, I will come back, and we will go down and have a lemonade."
- Q. How often have you and Mr. Norcross, the secretary of the Western Fuel Company, participated in a lemonade or something of that kind?

- A. Several different occasions.
- Q. And were you always invited by Mr. Norcross—[846—787]
 - A. (Intg.) And paid for by Mr. Norcross.
- Q. That is, Mr. Norcross, the secretary of the Western Fuel Company, would invite you to have these lemonades, and Mr. Norcross would be the person by whom the lemonades would be paid for, is that correct?

 A. That is correct.
- Q. And upon none of those occasions did Mr. Norcross suggest to you the impropriety of inviting you to take a lemonade with him, or discussing any matter with him; isn't that true? A. That is true.
- Q. At whose request did you go down to the office of Mr. McCutchen for the purpose of meeting the attorneys representing the defendants in this case.
 - A. D. C. Norcross.
 - Q. This same D. C. Norcross?
 - A. The same person.
- Q. Did you volunteer to go down there, or did the same D. C. Norcross ask you to go down?
 - A. Shall I relate the conversation I had with him?
- Q. How did the conversation take place, in the first instance?
- A. Well, at the last Grand Jury meeting, it was about four o'clock, and Norcross says, "Are you going anywhere?" I said, "I am here on the Grand Jury." And he says, "I would like you to go down to the office of our attorneys; we have got something we want to explain away, that barge overage," he says. "Well," I says, "that barge overage shows

in the book, it shows for itself." He says, "Well, come down and we will explain it," and so I went down there, and I met Norcross-I was going up in the elevator, and Norcross says,—before that, Norcross says, in the corridor, over there, he says, "You come on down, we know you are not going to do anything against us. In fact, we know positively you did not say anything against us." So, I went down, and when we were in the elevator, Norcross said, [847-788] "I was speaking to Mr. Smith last night, and I was telling him that you would help us out and come down here, you would come down and see the attorneys today. I would like to tell you what J. B. Smith was going to do for you, but I can't tell you now, I can tell you after the trial." Then we went up to the office of Mr. McCutchen, and Mr. Moore being there, with Mr. McCutchen and Mr. Olney, we spoke for a while, and then when they were finished—they said they were finished, and Norcross turned away. and Mr. Olney said "There is only one question more, we want to ask you," just as Mr. Norcross went through the door, and then they dismissed me.

- Q. In any event, Mr. Norcross, as secretary of the Western Fuel Company, who are represented here by Mr. Moore and these other attorneys, was the gentleman by whom this appointment was made; is that correct? A. It was.
- Q. Did he make a specific appointment for the day following the day when you were subpoenaed to appear before the Grand Jury?

- A. He did. He wanted me to go down that same afternoon.
- Q. He wanted to take you fresh from the Grand Jury room down to the office of the attorneys for the Western Fuel Company? A. He did.
- Q. At that time, there was no objection urged by him to your coming in contact with his attorneys, with the defense's attorneys, nor did he suggest to you the impropriety of that course?
- A. He said, "Maybe some of that Tidwell's men are around, or some secret service men" would see us as we went through the hall, and when we got to the office of the attorneys, he said, "Eddie and I were afraid some of the Government detectives or secret service men were following us."
- Q. In any event, the appointment was made by Mr. Norcross, it [848—789] was kept by you the next morning, and you met Mr. Norcross and went with him to the office of Mr. McCutchen; is that correct? A. I did.
- Q. When you reached the office of Mr. McCutchen, Mr. Olney, his partner, was there, and Mr. Moore?
- A. And they had the seats all arranged for me to be in the middle.
- Q. Those three persons were present at the time and already there when you entered the room?
- A. Yes. I phoned to Mr. Norcross. He told me to phone up and he would tell me what time to come up. I believe I seen Mr. Norcross going into the office a half an hour before then, but when I phoned they said he was not there; they claimed he had not

reached the office yet, but the second time, when I telephoned half an hour later, he was there. I believe he was waiting for Mr. Moore to come to the office.

* * * * * * * *

Mr. ROCHE.—Q. In addition to Mr. Norcross' manifestations of friendship, to what extent have you come in contact with the defendant, James B. Smith, during the trial of this case?

A. Just to pass him in the corridor, that is all; I met him in the elevator one day.

Q. Prior to the trial of this case and after you ceased being employed by the Western Fuel Company, were you friendly with Mr. Smith?

A. We never spoke; I seen him several times but we never spoke.

Q. That is, he would pass you by on the street without speaking to you?

A. He would pass me once or twice. [849—790]

Q. Did anything of that kind occur in the corridors of this courthouse since the commencement of this trial?

Q. Whenever he would meet you, do you mean?

A. Whenever he would meet me.

Q. You say you recall at one time meeting him in the elevator of this building? A. I do.

Q. Was anything said upon that occasion by him to you as the elevator started down and for some reason it came back again.

A. Mr. Stanley Moore and Mr. J. B. Smith entered the elevator; Mr. Smith said to me, "How do you

do, Eddie?" Mr. Moore was there. Mr. Smith said something, I don't know whether he said Mr. Moore, or Stanley, or whatever it was, "Mr. Moore, you know Eddie, don't you?" And Mr. Moore said, "Why, yes, how are you to-day, Mr. Powers?" And he shook hands.

Q. You don't mean to say that Mr. Stanley Moore, who cross-examined you this morning, shook hands with you, do you?

A. Yes, he was the gentleman.

Q. And he was on that occasion introduced to you by the defendant, James B. Smith?

Mr. STANLEY MOORE.—Let him do the testifying, Mr. Roche. This is very important, you know, and we don't want to have him led.

Mr. ROCHE.—Q. By whom were you introduced to Mr. Stanley Moore, the gentleman by whom you were cross-examined this morning?

Mr. STANLEY MOORE.—I suggest again, Mr. Roche, let him do the testifying. This is the most serious evidence we have had yet, and I suggest that the witness be permitted to testify himself without any suggestions being made by counsel.

Mr. ROCHE.—This is not a leading question. [850—791]

A. Mr. D. C. Norcross.

Mr. STANLEY MOORE.—The fact of the matter is that I met him before and I spoke to him before.

The WITNESS.—Yes, in Mr. McCutchen's office.
The COURT.—The witness has answered the question.

Mr. ROCHE.—Q. How long did this interview last which took place in Mr. McCutchen's office?

- A. I should judge about 15 minutes.
- Q. You testified upon direct examination, and you were likewise cross-examined upon the subject regarding endeavors on our part to obtain statements from you; how frequently did Mr. Tidwell endeavor to obtain a statement from you regarding your knowledge of the facts and circumstances connected with this case?
- A. I have already stated that Mr. Tidwell tried it once and he did not succeed, and he never broached the subject again. He may have made a remark to me concerning the case or something like that, but he never tried to go into the case again.
- Q. That is, he never after the first occasion to which you have referred, asked you to make a statement? A. He did not.
- Q. You know Mr. McNab, the former United States Attorney, do you?
 - A. I do; I met him here in the building.
- Q. You met him here in the building at a time when you were subpoenaed to testify before the Grand Jury, and prior to the return of one of the indictments in this case, did you? A. Yes, sir.
- Q. Did Mr. McNab on one or more occasions endeavor to obtain a statement from you concerning your knowledge of the facts and circumstances connected with this case? [851—792]
 - A. He did.
 - Q. Did you at any time or at any place or under

any circumstances make to Mr. McNab or to anyone connected with the United States District Attorney's office any such statements?

- A. I made them to Mr. McNab.
- Q. You made statements to Mr. McNab?
- A. Yes, sir.

Q. I don't mean in response to a question put to you, Mr. Powers, or anything of that kind, but did you ever make any statement regarding what you knew about the case?

A. I did not.

I first got connected with the fistic exhibitions to which I have testified when I was employed by the Western Fuel Company. Those activities covered about two years. They did not interfere in any way with the discharge of the duties which I was required to perform for and on behalf of the Western Fuel company. I have not as yet heretofore related all the circumstances connected with my leaving the Western Fuel Company. When I left the books there and did not make any entry for the day I left, and had not appeared for three or four days, Mr. Mills telephoned me and after 4 or 5 days I went to the Western Fuel Company and sent my name in to Mr. James B. Smith.

Q. In a question put to you by Mr. Olney this morning regarding the conversation which he claims transpired between yourself and himself in the office of Mr. McCutchen, he said, among other things,

speaking to you: "If I did not open up the conversation by saying to you, Mr. Powers, we want to know what the truth is about this matter, is there anything wrong or was there anything wrong down there in connection with the loading of vessels, or anything that you know about down there on the waterfront"; and did you not say, "Yes, there is something wrong," and did we not ask [852—793] you what it was which was wrong; and did you not then reply to us that the thing which was wrong was that the buckets were heavier loaded when they were weighed than when they were not weighed. You remember that being a part of the question which was put to you by Mr. Olney in the presence of the jury this morning, do you not? A. I remember it.

- Q. And then there was something else said about the system; you recall that, do you not, in which Mr. Olney said that you said it was due to the system in vogue relating to the weighing of the coal; you recollect that testimony, do you not? A. I do.
- Q. And you recall the testimony given by you in which you said that at that time you said the system was partially responsible for it?
 - A. That is what I remember saying.
- Q. The system to which you referred upon cross-examination was the system being pursued in the weighing of the tubs of coal that were being discharged from time to time from the barges?

A. It was.

I have testified that the men had more time to fill the tubs with coal when they were being weighed

than when they were not being weighed, and that the tubs are hoisted up on some occasions more rapidly than on other occasions, and that two men are assigned to each tub; and that it oft times occurs, during the time that coal is being hoisted up from the hold of a barge to the top of the hoist, that the men who are filling the remaining tubs in the hold of a barge complete their labors before the tub descends, and that this is the manner that coal is ordinarily discharged from a barge. About 360 tons a day is a good average day's work. If these buckets are being hoisted at say 30 an hour, that would be about 2 to each bucket, the men would have practically eight minutes within which to load and bring the bucket of [853—794] coal forward to the hatchway. It frequently occurs, then, that the two men engaged in loading each tub or bucket complete the labor of loading that tub before it is necessary for them to meet the hook; and it also often occurs that these two men complete their labor, so far as the loading of a particular tub or bucket is concerned, before they are called upon to meet the hook upon occasions other than those upon which the tubs are being weighed. There have been occasions when more than two men were employed for the purpose of filling each particular bucket or tub of coal. rapidity with which these buckets would be hoisted from the hold of the barge to the top of the hoist depends, among other things, upon the ability of the men to perform their work.

Q. How frequently has it occurred that you would

(Testimony of Edward Powers.)
employ more than two men to fill each particular tub
of coal?

A. They were not exactly employed to fill the tubs; they would have a long run perhaps, right at the ends of the barge; that is, the bow and the stern, and we would send two men down into the hold, one at each end of the barge; there are two tubs in each end of the barge,—we would send one man forward and one man aft and their duty was to throw lumps of coal in and to throw a shovel full in and push the tubs out, to quicken the delivery of the coal, to quicken the work.

* * * * * * * * *

The COURT.—Q. Eliminating all the testimony you gave yesterday from the question put to you by counsel, what was your practice in weeding out the men?

A. The hatch-tender was sent in charge of each man. If they had a clear run, that is, the hole was large, and there was nothing to stop them, nothing to blockade them, and if the engine did not [854—795] stop, we knew how much they should hoist in a day, or we knew how much they should hoist in an hour, and if they did not get out that much we would ask the hatch-tender what was the matter, and he would say, well, the men did not meet the hook, and then we would say, well, if they can't do the work fire them and get men who can do the work.

Mr. ROCHE.—Q. How would you determine the quantity of coal which each gang of men handled from time to time? Would it be determined by the

number of tubs that went up or by the weight of the coal that was hoisted during the time each gang was on duty?

- A. By the weight of the coal.
- Q. And it is a fact, is it not, Mr. Powers, that the weight of the coal which was discharged by each particular gang was determined by the weight of the buckets which in fact were weighed?
 - A. That is true.
- Q. And by those buckets alone, taken as an average; is that true? A. That is true.

The reason for my lack of employment during the last year has been that I could not obtain employment. I went to Mr. Chisholm on the Mail Dock, and asked him to speak to the stevedore and ask him to give me a job pushing a truck on the wharf, or doing anything. I also went to the foreman on the Portland dock and asked him the same thing. I attempted to be released from the subpoenas served upon me from time to time by the Government in order to enable me to go to sea during the last year.

There was not, so far as I could see, any stenographer present during the conference which I attended in the office of Mr. McCutchen. There may have been a dictograph. [855—796]

While coal is being discharged from a barge in to a vessel, coal is of course consumed upon the barge for the purpose of generating steam. That coal is obtained out of the hold of the barge, and is a part of the cargo of the barge.

Q. Is it or is it not a fact that all of the coal con-

sumed from time to time upon the barges for the purpose of generating steam is taken from the cargo that is placed upon the barge, either from the offshore bunkers or from some ship or from the yard?

A. It is.

Six or seven tons a day are consumed on these barges during the process of unloading. I believe the "Melrose" consumes more coal than any of the other barges. I would say she would use eight tons a day. Where the records of the defendant Mills show that a certain quantity of coal was laden into the barge and a certain quantity of coal discharged from the barge, and that an overage occurs, the coal consumed by the barge is not calculated in the overage.

I recall testifying concerning the "Algoa." I think between 50 and 100 tons were, during her discharge, taken from her cargo and put into that ship's bunkers, and that number of tons is not accounted for in the records of the defendant Mills, so that the amount thereof would have to be added to the overage. When the "Algoa" was discharged there was quite a little coal left in her. There were lumps scattered around the hold and in the side of the ship.

Mr. ROCHE.—Q. During the time you were acting as assistant superintendent to the defendant Mills, did you personally employ or discharge men? [856—797] A. I did.

Q. Did you at times personally employ or discharge men who worked as shovelers in these gangs upon the barges?

- A. I did not personally discharge them; I told the hatch-tender to discharge them.
 - Q. Did you personally employ them?
- A. If we were working 3 or 4 barges I might go out and chase up men to put on the barge and put a hatch-tender over them.
- Q. That service was ordinarily rendered by the hatchman, was it? A. It was.
- Q. Do you know whether the hatchman had any instructions with reference to the particular man or particular men to employ upon those occasions?
- A. He was supposed to get men able to do the work.
- Q. Do you mean by that that he had instructions to that effect?
- A. Yes, sir; he had to get the work out; he was responsible for discharging that barge, and if he did not discharge enough I was supposed to get after him and find out what was the matter.
- Q. Let me put one other question to you upon that subject, Mr. Powers: Is it not a fact that if a man employed upon one of these barges as a shoveler was not able to shovel the amount of coal which the hatchtender or the Western Fuel Company believed he should shovel, ascertained by the out-turn or Government weight of the coal shoveled, that he would be discharged; in other words he would be, to use the language of the barge, given the hook instead of

A. They were supposed to fire him if they could get a better man in his place.

The times when the Government weighers made complaints were when they caught the men overloading the tubs when they went on the scales and not filling them properly when they were not going on the scales.

I remember that the stern of the barge "Melrose" sank on one occasion. I believe the coal was heated, and the cargo was submerged up about to the main hatch at high tide. The barge was a few days at least in the water. A part of her cargo was disdischarged at the time the water was being pumped out. That part of her cargo was put into one of the Freeze barges. The "Melrose" and the barge itself were eventually towed to Folsom Street. The next day the coal that was taken out of her was replaced from the other barge right into the "Melrose"; whereas, the cargo on the "Melrose," I think, went into a Japanese steamer; at any rate, it was discharged in a short time. I have no recollection when that occurred.

Recross-examination by Mr. STANLEY MOORE.

Mr. STANLEY MOORE.—Q. Do you remember your telling Mr. Norcross while you were out in the hall, both of you under subpoena to appear before the Grand Jury, and while you were waiting around to be called, anything about the system of weighing

(Testimony of Edward Powers.)
down on the barges, or this proposition of meeting
the hook?

- A. No, I don't remember; I may have but I don't remember making any statement.
- Q. Mr. Norcross himself you never used to see down there on the Mail Dock or around the barges, did you? [858—799] A. Never.
- Q. His work did not bring him very close to those operations, did it? A. No, sir, it did not.
- Q. Is it not a fact that you were talking to him, and you were talking to him at considerable length on that particular day while you and he were waiting to appear before the Grand Jury with respect to that matter of the meeting of the hook down there?
- A. Not of the meeting of the hook; we were speaking of the Western Fuel Company; and before I went to the Grand Jury room Mr. Norcross said if they asked me what will I say—no, I asked him—I mean, he says, "The Grand Jury will ask you what you were talking to me about"; he said "Tell them that you were talking about generalities."
- Q. That may stay in, your Honor, although it is not responsive to a question. I have no objection to it. Without regard to whether he said generalities, Mr. Powers, or what he said, I am asking you now for what was said on that subject; did you say anything to him while you and he were waiting around to be called before the Grand Jury about this matter of meeting the hook and the buckets coming up only three-quarters of a minute apart at times between weighing and their being considerable delay

at the times they were weighed; did you say anything to him with reference to that?

A. I may have said that; I don't remember; I may have said that.

Q. (Intg.) We may get around to that; I am asking you now about the conversation you had with him prior to the time of your going down to the office of Mr. McCutchen and Mr. Olney, and I am asking you if it is not a fact, to the best of your recollection, [859—800] that you then explained or stated to Mr. Norcross this matter of the unloading of the buckets from the barges, and the proposition of meeting the hook and the delay that came about at the time a weighing was to be taken; now, is it not your recollection—

A. (Intg.) Not at the last Grand Jury; I may have made that to him before, but it was not at the last meeting of the Grand Jury.

Q. I am talking now just about a day prior to your coming down to Mr. McCutchen's office.

A. That statement was not made that day, no.

Q. Is it not a fact that at the time he spoke about your speaking to the attorneys for the defendants you had been talking about the overage and about the method of the unloading of the barges and about this proposition of the meeting of the hook and the time that the buckets went up when the weights were not to be taken?

A. He never said anything about it on that day; he never was around there.

Q. No, I am not asking you about him not having been around down there where the barges had been unloading; I am asking you if you were not talking to him about it and explaining it to him?

A. I may have spoken to him about that, but it was not on the day prior to the day we went to your office.

Q. Is it not a fact that you had been talking to him about that, when he stated to you "Would you mind explaining that to our attorneys?"

A. Do you want me to repeat the entire conversation I had with Mr. Norcross?

Q. I want you to answer the question, please.

A. I did not. [860—801]

Q. And he asked you if you had any objection to doing so?

A. No. He asked me to go down there to see you and to—

Q. (Intg.) Did he ask you—

Mr. ROCHE.—Just a minute. Let the witness finish his answer.

A. He asked me if I would go down there, and I said I had no objection to going down there; and he said, "Why, no, you have not said anything against us; you are not against us; you are with us.

Mr. STANLEY MOORE.—Q. Very well. He did ask you if you had any objection to your going down there. A. He said, "Will you go down"?

Q. And then did you say, "I have no objection to going down"?

A. I said I would go down, which I did.

Q. Well, that word was used. At that time had

(Testimony of Edward Powers.) anything been said about employment?

Q. This matter of employment came up in the elevator, did it?

A. Just as he stepped in the elevator he made that remark; he did not say anything about employment; I did not make that statement. I said that Mr. Norcross stated to me, as he stepped into the elevator, or while we were in the elevator just leaving the ground floor, he said, "I was talking to Mr. Smith last night, and I told him you were coming down here to see the attorneys, and I would like to tell you what he said he was going to do with you, I can't tell you now, I will tell you after." That was the remark Mr. Norcross made.

That statement was made either in the elevator or stepping into the elevator. I stated that I would go down there to the office of the attorneys for the defendants before any suggestion [861—802] or statement regarding what Mr. Smith would do for me had been made to me.

Mr. STANLEY MOORE.—Q. Was Mr. Norcross' remark to you, what you had in mind when you testified here in answer to my question as to how you would answer the attorneys on that occasion, that a person might have something else in his mind?

A. No, sir. Do you want me to give you the explanation about it?

Q. Yes.

A. Well, I will tell you. I would not trust the words of certain people it came from as far as I could

(Testimony of Edward Powers.)
throw a bull by the tail. That is why I would not believe him.

- Q. In other words, you had no expectation or idea that the Fuel Company would give you a job, had you?
 - A. Give me a job? No, I did not.
- Q. What was it, then, that you had in mind when you testified here this morning with regard to answering the questions the way we wanted you to, that a man might have something else in his mind?
- A. I believe I answered that question this morning, Mr. Moore.

Mr. STANLEY MOORE.—Q. When I saw you in the elevator, or when we rode down in the elevator, that was not the first time I had spoken to you since the meeting down in Mr. McCutchen's office, was it?

- A. You may have nodded to me.
- Q. Don't you know that I had spoken to you? I am not going to argue this matter with you.
- A. I think you did speak to me or you nodded to me. There was no conversation, though.
 - Q. We had exchanged greetings?
 - A. I believe so. [862—803]

Mr. STANLEY MOORE.—Q. You spoke about lemonades that you had with Mr. Norcross; they were not both lemonades, were they?

- A. Not Norcross'; he had a stick in his.
- Q. As a matter of fact, on one occasion you spoke to him in the hall, or going up the street, did you not,

about this very barge—the "Melrose"—that counsel inquired about, the sinking of the "Melrose," or the partial sinking?

- A. Yes, he asked me about that; he said Mills did not remember it; he said Mills thought somebody telephoned to him in Oakland about it one night; he spoke about that.
- Q. Did he tell you that Mr. Roche had asked him to try and find out about the sinking of that barge, or whether some coal had been lost as the result of the sinking?
- A. I think that Mr. Norcross asked me, if I remembered it, and I told him I did; he said that Mr. Mills did not remember it.
- Q. And he had a conversation with you about that, as to whether the barge sunk and as to whether the cargo of coal was lost?
- A. He absolutely did not say a word about the cargo of coal being lost or otherwise, or anything concerning the cargo at all.
- Q. What did he ask you about the barge "Melrose"?
- A. He asked me if I remembered the date she was taken over there and I told him I remembered taking her over there, but I did not remember the date. I told him to ring up the Spreckels Company or Mr. Prior, who was superintendent of it, and he would tell him.

Mr. STANLEY MOORE.—Q. Now, another time that you and he had a drink, you taking lemonade and he taking something else, do you remember it was

(Testimony of Edward Powers.)
while your brother was being examined here?
[863—804]

A. I think so. He treated quite often.

Q. And you asked him some questions about your brother, or how he was getting along, or something like that, and you walked up the street with him?

A. I don't remember asking him how he got along; the newspapers told that.

Q. Well, it was during that time in any event, was it not?

A. It was during that time I had a drink with him, yes.

The "Algoa" already had some coal in her bunkers when the "Indra" and the other vessel began to discharge coal into her. The "Algoa," I think, has 12 or 15 hatches. She was a very big storeship. There was not, that I know of, a considerable quantity of coal in the "Algoa" in the same compartments as the other coal that was put in. Whatever holds I went into I saw were comparatively empty, but I may not have looked into all the holds. In answer to the question if I would undertake to state now that there was not a matter of a number of hundreds of tons in that vessel at the time the coal was put there, and in the same compartments, I would state there was not, so far as I could see. I was aboard the "Algoa" once or twice a day, and may be oftener when she was being loaded. I was chasing men up to trim her at the time, and working for Mr. Mills, and I was also working for the Western Fuel Company. I think she was loaded at Folsom Street, and

that they were discharging into two or maybe as many as four hatches. I think there were four weighers, one for each hatch. I don't remember going down into the hold before the coal was placed there. It is my belief that the "Algoa" did not have any considerable quantity of coal in her at the time they began loading her. [864—805]

I came to Court alone this morning. I spoke to Mr. Roche and Mr. Sullivan at lunch time to-day. I had lunch with the little "Chronicle" man to-day, and Mr. Thomas Sardou was also present. During the noon hour I asked a person who I am pretty sure was Mr. Masters to carry a message to Messrs. Sullivan and Roche, that I had been in conference with Mr. McNab, and had told Mr. McNab something concerning the case, and that they should send down to Mr. McNab to see if that was the truth. There was some gumshoe men standing around when I gave this message.

Further Redirect Examination by Mr. ROCHE.

I do not see any of these gumshoe men around now. They are in and about all the time.

The Government weigher located on a barge at the time the barge is discharging coal into a vessel does not have anything at all to do with the rapidity with which the tubs are hoisted from the hold of the barge to the bumper above on occasions when the coal is not being weighed. The Government weighers do not have anything to do with the duration of time during which the tubs are permitted to remain in the hold

(Testimony of Edward Powers.) or with the rapidity with which the men in the hold shall work.

Further Recross-examination by Mr. McCUTCHEN.

Mr. McCUTCHEN.—Q. Mr. Powers, you were asked by Mr. Moore on your recross-examination whether you had sent a message at any time since you went off the stand yesterday to Messrs. Sullivan and Roche, or to Mr. Tidwell, and you answered first that you had not. A. Not that I remembered of, I said.

- Q. Do you remember the time the Court adjourned this morning? [865—806]
 - A. I believe around 12.
- Q. And it is now slightly after 3 o'clock; do you want us to understand that when you made that answer to Mr. Moore you had forgotten that within two hours of that time you had requested Mr. Masters to take a message to Mr. Roche and Mr. Sullivan?
 - A. That had slipped my memory, yes, sir.
- Q. It had slipped your memory; did you also remember, at the time, at the time you made that answer to Mr. Moore, or I mean, had you also forgotten that you had requested some one to go to Mr. McNab?
- A. I told them if they would go to Mr. McNab, Mr. McNab would tell them what I said, yes, sir.
- Q. Mr. Powers, my question was whether when you made that answer to Mr. Moore you had also forgotten you had requested someone to go to Mr. McNab?
 - A. That had slipped my memory, yes, sir.
- Q. Did it slip your memory, or did it occur to you that it might be embarassing to admit that you had

sent a message to Messrs. Roche and Sullivan or to Mr. Tidwell?

- A. It is not embarrassing to me if I sent a message to them concerning the truth.
- Q. You have a pretty good memory, have you not, Mr. Powers? A. I have a fair memory.
- Q. You have testified with considerable particularity to interviews and conversations that took place several years go, have you not? A. I have.
- Q. And do you wish us to understand that you were somewhat in doubt when Mr. Moore put that question to you as to whether you actually sent a message to Messrs. Roche and Sullivan?
 - A. That slipped my memory, yes, sir.
 - Q. I mean by Mr. Masters? [866—807]
 - A. It had slipped my mind, yes.
- Q. It was not recalled to you until Mr. Moore asked you whether you had sent a message to one of these gentlemen by somebody? A. It was not.
- Q. And you recalled that you had made such a request of several people out in the hall?
- A. I had spoken to several people concerning it in the hall, and I had spoken to them down in the restaurant also, the "Chronicle" man and Mr. Sardou and a few others.
- Q. Had you requested them also to take messages to Messrs. Sullivan and Roche or to Mr. Tidwell?
 - A. I don't remember; I may have.
 - Q. You may have? A. I may have.
 - Q. Are you in doubt about that?
 - A. I have answered the question.

- Q. I say, are you in doubt about that?
- A. I have answered the question.
- Q. Is your recollection at all hazy as to whether you requested those gentlemen to take messages to Messrs. Sullivan and Roche, or to Mr. Tidwell?
 - A. I have answered the question.
 - Q. And is that the only answer you can make?
 - A. I have answered the question.
- Q. Is your recollection also in doubt as to whether you requested them to take messages to Messrs. Roche and Sullivan, or to Mr. Tidwell?
- A. I was speaking to them about the case, and I don't know whether I requested them to do so or not.
- Q. Did you request anyone other than Mr. Masters to do so? A. I may have.
- Q. Did you request anyone other than Mr. Masters to take a message [867—808] to Mr. Roche and Mr. Sullivan, or to Mr. Tidwell?
 - A. I may have.
 - Q. Who was the person?
 - A. I was speaking to different people.
 - Q. Name them.
 - A. Mr. Masters and also the "Chronicle" reporter.
- Q. Did you also request the "Chronicle" reporter to take a message to Mr. Roche and Mr. Sullivan, or to Mr. Tidwell?
- A. He was present at the time. I am pretty sure I told Mr. Masters to take the message.
- Q. Are you also equally sure that you requested the gentleman representing the "Chronicle" to take the message?

 A. I have answered the question.

Mr. ROCHE.—Just one minute. I object to that, if your Honor please, upon the ground that the witness has already stated what he did.

The COURT.—No, he did not. That was just the trouble. He did not state what he did; he said that he may have done so. Read the question to the witness.

(Question repeated by the Reporter.)

A. I was talking about the case and I don't remember exactly whether I did, or not.

[Testimony of D. C. Norcross, for the Government.]

D. C. NORCROSS, a witness recalled for the United States, testified as follows:

Direct Examination by Mr. ROCHE.

I recall being questioned the other day concerning a letter sent to me, as secretary of the Western Fuel Company, from the Nanaimo office of said company regarding the charging against said company of 100 tons more coal than the quantity [868-809] of coal which was specified in the bill of lading of the cargo concerned. I said that I could not give any explanation of that matter, and that I could not recall why it was done. Since that testimony I have seen a letter that I wrote in 1907 or 1908 saying that I could see no reason for the Nanaimo office continuing to follow that practice. I saw the letter referred to last week in connection with my producing under subpoena for the Government certain correspondence between our San Francisco and Nanaimo offices. I do not know how long the practice of sending such

letters continued. I cannot now, any more than before, give the reason why these charges were made from time to time against the Western Fuel Company at this place for a greater quantity of coal than apparently was placed in these boats, according to the invoice and bill of lading. It is a fact that from time to time we received letters similar in kind to the ones heretofore introduced in evidence, from the Nanaimo office. I presume it is a fact that we received such a letter practically every time a cargo of Nanaimo coal was sent to San Francisco. I did not care what Nanaimo billed here. We paid whatever the Government weighed out of the vessels at San Francisco. I knew there was a difference between the bill of lading weight and the out-turn weight in nearly every cargo. I knew also that separate accounts were kept as to the cargoes of coal imported from British Columbia into the United States by the Nanaimo and San Francisco offices respectively.

(The attention of the witness was here directed to a number of letters relating to the same subject matter.)

These are letters received by me from time to time covering specific cargoes of coal sent from our Nanaimo office to the Western Fuel Company in California. Whether such a letter was sent with every cargo for years prior to October, 1908, I do not know. I do know that the bills heretofore referred to, showing the bill of lading weight and at the bottom what purported to be the actual weight of the various cargoes, continued to arrive with each cargo until and

including the month of December, 1912. I cannot say as to how many of the letters which preceded said bills were sent before October, [869—810] 1908. I cannot remember a single cargo coming in before 1908 with which such a letter was not received. When these letters were not opened by me, I presume they would go directly into the hands of Mr. J. B. Smith. I do not think that Mr. Howard ever opened any mail. I recall one letter that was referred to Mr. Howard.

(The attention of the witness was here directed to a letter dated May 9, 1907, reading as follows:)

"Steamer 'Tordenskjold.'

Please note we have charged you with 5823 tons, 100 tons more than bill of lading figures.

Yours truly,

MARK BATES, Jr., Cashier."

At the bottom of this letter there appears in lead pencil, the following words:

"Mr. Howard, do you think this necessary?

D. C. N."

That notation on the bottom of the letter is in my handwriting, and undoubtedly the matter was taken up by me with Mr. Howard. I presume there was a conference that I cannot remember. I believe I know something about the significance of those letters, but I am not at all sure about it.

(The attention of the witness was here directed to a copy of a letter dated November 12, 1907, reading as follows:)

"November 12, 1907.

Western Fuel Company.

Nanaimo, British Columbia.

Dear Sirs:

In the past you have been making out bills of lading on cargo shipments to us less than the actual [870—811] quantity shipped.

There is no reason for your further continuing this, and from now on please make bills of lading upon the actual quantity shipped.

Yours truly,

Secretary. D. C. N."

I presume I signed that letter, and either wrote or dictated it.

Q. Let me refresh your recollection by again calling your attention to some of this language: "In the past you have been making out bills of lading on cargo shipments to us less than the actual quantity shipped." What did you mean by that language, Mr. Norcross?

A. Well, probably, if I were writing now, I would put in there, "Less than the actual quantity claimed to have been shipped."

Q. You say, less than the actual quantity claimed to have been shipped? A. Yes.

Q. One of the copies of the notice would be sent to you from time to time, would it not?

A. With each bill, yes, sir.

Q. That is, when a cargo of coal was sent from the Nanaimo department of the Western Fuel Company to your department at San Francisco, the bill of lad-

ing, together with one of the invoices which I understand to have been executed in triplicate was sent to your office? A. It was.

- Q. And the bill of lading, and the copy of the invoice, or copies of the invoice, would reach San Francisco ahead of the cargo; that is correct, is it not?
- A. Sometimes it would, and at other times they would not. As [871—812] a rule, they should.
- Q. And, of course, taking into consideration your experience, you knew, did you not, at the time you received these letters, and at the time you received these various bills of lading and invoices, that the invoice weight and bill of lading weight, where there was not a split cargo on board, were the same?
 - A. I presume they were always, yes.
- Q. Always the same; that is, where the cargo was taken on board at one port? A. Yes, sir.
- Q. And, of course, you knew, did you not, that the Western Fuel Company, through its regular official or agent in fact at Nanaimo, declared the cargo before it was exported, or before the ship cleared at Nanaimo, before the American Consul, or consular official?
 - A. Yes, sir; to the best of his knowledge.
- Q. Now, calling your attention again to the language, "In the past you have been making out bills of lading on cargo shipments to us less than the actual quantity shipped," do I understand you to now tell this jury that if you were writing that letter to-day, that instead of using that language, you would use the language, "less than the actual quantity claimed to be

(Testimony of D. C. Norcross.) shipped"; is that correct?

- A. That is just what I would do.
- Q. Let me ask you this question, then, before I call your attention to another matter here: Is it your understanding that that was merely a claim being put forward from time to time by your Nanaimo office?
 - A. That is all it was.
- Q. In other words, according to your present testimony, then, it was merely a claim that you did not understand this additional quantity to represent the actual cargo shipped? [872—813]
 - A. They did not know the actual weight.
- Q. I am not asking you what you knew, but I am asking you if that was your understanding?
- A. I say they did not know the actual weight, when they claimed to put down the weight shipped.
 - Q. You say they did not know it?
 - A. That is right.
- Q. Let me call *you* attention to the next paragraph in this letter: "There is no reason for your further continuing this"—that is, the practice to which you have already referred? A. Yes, sir.
- Q. "—and from now on please make bills of lading upon the actual quantities shipped"; what did you mean by that paragraph?
- A. I meant that the bills should all read the same, the bill of lading and the bill for the coal, as the amount they claimed to have put in the ship.
- Q. Is that the only explanation you could make of the last paragraph? A. For further continuing. Mr. McCUTCHEN.—Just a moment. If your

Honor please, I submit that that letter cannot mean what counsel seems to think it means, because it speaks of actual weight in two cases.

Mr. ROCHE.—It seems to me it cannot mean anything except that I think it means, and unquestionably what it does mean. Let me read this letter to you, Mr. McCutchen. "In the past you have been making out bills of lading on cargo shipments to us less than the actual quantity shipped. There is no reason for your further continuing this, and from now on please make bills of lading upon the actual quantities shipped."

- Q. Does not that mean, Mr. Norcross, and did you not, at the time you wrote this letter intend it to mean, that the bill of lading [873—814] did not contain the actual weight of the cargo shipped?
- A. Did not contain the weight that they claimed they shipped, as I said before.
- Q. Then let me read the next paragraph of this letter—

Mr. McCUTCHEN.—If your Honor please, I don't think that counsel has the right to argue this letter with the witness in this fashion. The letter is here and it speaks for itself. I think we all can determine the meaning of the letter in the light of the facts as they have been developed here.

The COURT.—However, the witness is entitled to give his explanation of it if he desires to.

Mr. ROCHE.—Q. Let me read you the next paragraph: "There is no reason for your further continuing this, and from now on please make bills of lading

upon the actual quantities shipped." Now, did you not intend, by the last paragraph of that letter, to request or direct the Nanaimo office to increase the bills of lading so that the bills of lading would correspond with the quantity of coal which the Nanaimo office claimed that was represented by the bill of lading plus the quantity specified in these letters?

- A. I wanted everything to agree, the bill of lading with the bill; no less than they claimed.
 - Q. Will you point out in that letter—
- A. (Intg.) I read it, Mr. Roche; it is a very poor letter; I have read it over two or three times, and this is the only explanation I can give to you.
- Q. I would like you to point out in that letter any language which would indicate to the Nanaimo office, or any other office, or to any human being, anything which would indicate to the human mind the suggestion you have just made? [874—815]
- A. I wanted them to stop the practice they were carrying on of making the bill of lading represent less than the actual amount. I admit that it is a very poor letter.
 - Q. Did you get any response to your letter?
- A. There might have been one. I don't know. It would be in the files if I did.
- Q. Have you any recollection of having received any answer to that letter?
 - A. I have no recollection of it now.
- Q. You know, as a matter of fact, do you not, that the practice was not discontinued, but that these bills

were sent from time to time showing that at least they claimed that a greater quantity of coal was placed in the ships than was represented by the invoice or bill of lading?

A. I believe they continued the bills as they had before.

Mr. ROCHE.—We offer these other letters in evidence as one exhibit, as Exhibit 139.

(The letter dated November 12, 1907, was here marked "U. S. Exhibit 138," and the other letters marked as one exhibit, viz., "U. S. Exhibit 139.")

I want to call the jury's attention to one or two of these letters:

"January 19, 1907. Steamship 'Titania.' Please note we have charged you with 5592 tons, 50 tons more than bill of lading figures. Yours truly."

By the way, Mr. Norcross, it is true, is it not, that the figures in these letters, such as, for instance, "We have charged you with 5592 tons," would represent the invoice weight plus the additional charge. Let me read that letter to you: "Please note we have charged you with 5592 tons, 50 tons more than bill of lading figures." [875—816] You compared those letters, I suppose, from time to time with the bill of lading figures? A. I never looked at them.

- Q. You say you never did?
- A. I don't remember ever looking at them.
- Q. Very well, I won't press that. The next one is August 30, 1907, 50 tons more than bill of lading figures.

The next is February 25, 1907, steamship "Tellus,"

"Please note we have charged you with 3558 tons, 30 tons more than bill of lading figures."

Those tons varied, did they not, from 30 tons to 100 tons?

- A. About that, I think, as I notice it from those letters.
- Q. Without reading all of these letters, that is the fact, is it not, Mr. Norcross?
- Mr. McCUTCHEN.—Mr. Roche, I would prefer not to have the witness state that unless he has examined all these letters himself. I would rather take your statement of it subject to correction.

Mr. ROCHE.—All right, I think that is the fact.

- Q. Have you now, Mr. Norcross, any recollection of having received from the Nanaimo office any letter of any kind, prior to the month of December, 1912, relating to the charging of these additional quantities of coal?
- A. Nothing further than these letters that you have just put in evidence.
- Q. And you have no recollection at all of having received any letter from the Nanaimo office in response to the letter which you wrote a copy of which has now been introduced in evidence?
 - A. No, I have not. [876-817]
- Q. Have you any recollection of having written to the Nanaimo office about the month of October, 1908, or at any time thereafter, upon the recipt of these various bills of statements that have been received in evidence, upon each one of which appears to be indicated the actual quantity of coal shipped in a

particular cargo, which quantity exceeded the quantity specified in the bill of lading or in the invoice?

- A. I don't recollect it, no.
- Q. And you have no recollection, as I understand your testimony, of having had any conference with the defendant, Howard, regarding these matters, or with the defendant, James B. Smith, excepting as heretofore testified to by you?
- A. I presume from that letter, from that note on there, that I did have a conversation about it.
 - Q. But you don't recall what the conversation was?
 - A. No, I do not at this time.
- Q. And that is true, is it not, Mr. Norcross, notwithstanding the fact that these letters have come to you from month to month, right up to almost October, 1908, and thereafter these bills have been sent to you?

A. They have come right along. I have an inkling of the reason for it, but I don't remember our discussion about it at all.

[Testimony of John W. Smith, for the Government.]

JOHN W. SMITH, a witness called for the United States and sworn, testified as follows:

I live in Oakland, and am now and have been for about six years last past a customs agent in this district. My duties are concerned with the investigation of frauds against the Treasury Department. Mr. Tidwell is my superior. I recall [877—818] on or about the 18th of December, 1912, making a trip for observations upon the steamship "Korea," then lying at pier 44. I was there from about two

to four in the afternoon, and from about seven in the evening until five the next morning, with the exception of a short time off. The "Korea" was at that time taking on coal. She was being coaled by the Western Fuel Company from the barge "Wellington" on the inshore side. This last statement is in reference to the night-time. In the afternoon I think she was being coaled by the barge "Theobold" on the offshore side. I am not absolutely sure, but I think Mr. Dave Powers was with me on the afternoon trip. He was in the employ of the Government at the time as a customs agent. The situation that I observed during the afternoon in connection with the coaling of the "Korea" was exactly what I had observed previously on December 16th and 17th. I was down there then too for the purpose of observing the coaling of the "Korea." On those occasions I was accompanied by Mr. Powers. We went in the daytime only on the 16th and 17th. On the 16th we were there from about 1:30 to 5, and on the 17th from 11 A. M. until 5 P. M. On the 16th the "Korea" was being coaled from the "Theobold," as also on the 17th. Upon these three dates, the 16th, 17th and 18th, during our observations in the daytime, I stationed myself at different places on the steamer "Korea." where I could best see the coaling. I do not think I went down upon the barge. I was at one time across at the other dock, on another ship, I believe, but for a short time only. I do not recall which particular day that was. I located myself on the upper part of the steamer; part of the time on the

bridge, and part of the time on the upper deck. On the first date I counted the tubs to see how many they were weighing, [878—819] the average they were taking-and they were running 56 tubs, and then weighing the next four. That was on the first date. I do not remember the name of the weigher. On the second day I did not count the tubs. The same weigher was present, I think, but I am not certain. I did not notice the number of weights that they were taking on the third day, that is, on the 18th. The tubs that were not weighed were lighter than those that were weighed. I was on the bridge part of the time, and on different places on the deck, not very far from where they were running the coal into the ship. I am not certain whether they were putting coal into the same hole during the three days. I could tell by the position occupied by me when weights would be taken. I did not make any memorandum of the rapidity with which the tubs were being hoisted. Mr. Enlow, I think, was with me, as well as Mr. Powers, during a part of the daytime, but I could not say on which day. The tubs which were weighed were in every case heaping full, well rounded out, and the tubs which were not weighed were hardly ever rounded out. To my recollection none of them were as full as the ones that were weighed. In the case of the tubs that were not weighed, the coal would sometimes be below the top of the tub. It would quite often be that way. my recollection, though, I could not say positively none of the tubs that were not weighed were rounded

out as full as the ones which were weighed. Referring still to the daytime, it appeared to me that the tubs that were weighed had more fine coal in them than the tubs that were not weighed. I was able to see the coal as it was being discharged, that is, as the buckets were being tripped. On that barge, the "Theobold," the tub would be tripped by two men being on top, according to my recollection, each of whom would [879—820] take hold of the tub and dump it. The coal is lifted from the hold to the tripping point by a donkey-engine. There is a conveyor or chute running from the barge which permits the coal as it is dumped from the bucket to fall over from the deck of the ship into the hold of the liner. I do not remember whether the chute or conveyor is covered or not on that particular ship.

On the days when the "Korea" was being loaded I was from 20 to 100 feet from the point of discharge. I was close enough to see the character of the coal, and observed its character upon occasions when coal would and would not be weighed, respectively. My recollection is that the chute was covered for a short distance, and open for the rest of the way. The coal would spread out in the chute and not go down in a lump. Some of the tubs that were not weighed appeared to be all lump coal. None of the tubs that were weighed were that way. In the coal that was weighed there was a great deal of fine coal.

I recall visiting the "Korea" on the night of December 18th. Dave Powers and Mr. Enlow, an inspector of customs, accompanied me. I reached the

"Korea" about seven o'clock in the evening, and remained watching operations until about five o'clock the next morning, excepting about from 12 to 1:30, and a period around 3 or 4 o'clock in the morning when we were away from a half to three-quarters of an hour. In the period from seven o'clock at night until 12 o'clock, I was most of the time on the bridge, but I was also over different parts of the deck. The bridge was maybe 50 feet away from that part of the "Korea" where the coal was being discharged. The top of the hoist at that time was some distance above the deck in which was located the hold through which the coal was dropped into the ship's bunkers below—I should say a distance of perhaps twenty feet. My recollection is that there were lights upon [880-821] the hoist where the coal would dump. I think there was a cluster of ship's lights located at that point upon the hoist. They were electric lights. The coal was weighed twice between seven o'clock and twelve o'clock. Between 7 and 7:30 they were not actually discharging coal, but simply fixing the chute; so that the two weights were taken during a period of 4½ hours. My judgment is that the tubs were being hoisted more rapidly than in the daytime. Four tubs were weighed upon each one of those two occasions when the weights were taken, one after the other. I do not know where the Government weigher was located when the weights were not taken. We could not see down into the hatch of the barge—there was not light enough. I don't remember seeing the weigher around except

when they were taking weights. The defendant, Edward Smith, was around there during the early part of the evening of the 18th, but whether he was there at any other time during the three days mentioned I do not know.

On the night of the 18th, when weights were not being taken, some of the buckets were only fairly filled. Some of them, to the best of my recollection, were not half full. There were several times when they had difficulty tripping the tubs at the point of discharge. Sometimes I could not see the quantity of coal in the tubs upon these occasions when there was difficulty in tripping them. There was not enough coal in the tubs for me to see it, though I could see at least a foot down in the tub. In the daytime the tubs that were not weighed were better filled than they were at night. The tubs that were weighed in the early part of that evening, from 7 to 12 o'clock, were always well filled. I left about 12 and returned about half-past one in the morning. They hoisted coal from then right [881—822] on until about five o'clock. I only saw one weight taken during that time. The weighed tubs were well filled, and the unweighed tubs were not well filled. The situation was about the same in this regard as in the earlier part of the night, except that in the morning near five o'clock the unweighed tubs appeared to me to be better filled when they came up.

I recall visiting the "Korea" again a short time on the 19th of December. Mr. Powers was with me. They were hoisting some coal from the barge but

slowly. They appeared to be cleaning up the barge.

I recall visiting the Folsom Street dock on January 13th for the purpose of observing the discharge of the steamship "Americano." I was accompanied by Mr. Dave Powers. Most of the time I was on the south side of the bunkers, on the bulkhead. That was in front of the Harrison Street dock. I could see the coal being lifted from the ship and being discharged into the hoppers or towers. I could also see the tops of the cars in which the coal was being discharged through the hoppers. I took up my position on that day about ten o'clock, and remained until a little after one o'clock. The Government weigher at that time on the dock was Mr. Thelen. shortly after 11:30. They appeared to stop work at that time. After Mr. Thelen left I observed that four cars were filled and run over to the scales without being stopped to be weighed. It is my recollection that it was shortly before 12 o'clock that the cars were thus filled. I could not see very well the discharge of the coal into the cars. I could hear it going into them, however. After the cars were loaded I could see them and their movement; that is, I could see the coal on top of the cars, and see the cars run out past the scales without stopping. The cars were [882—823] run westerly toward the coal shed. I am familiar with that tramway or runway extending across what is supposed to be an extension of the Embarcadero. The cars ran out westerly beyond the scales to about the middle of the street, that is, to about the middle of this tramway. I could see the

tops of the cars, but not their sides. I know the cars were not stopped on the scales. After the cars reached the center of the tramway they remained there until about ten or fifteen minutes before one o'clock; then they were run back again and dumped into the bunkers. I could hear the dumping operation. The cars did not stop on the scales on their return. Mr. Thelen was not there during any of this time. I was present when he returned, which was maybe ten minutes or so after the cars were dumped. Having been dumped, the cars were run back up to the hoppers again. I cannot say positively whether I left before or after they were again loaded.

Cross-examination by Mr. McCUTCHEN.

I do not recall the name of the weigher on the "The bold" on the occasion when I watched her discharging coal into the "Korea." On that date the tubs were weighed on an average of about four tubs in 60. I cannot say as to how many tubs were discharged in all from the "Wellington" into the "Korea" on the night that I described. The tubs are lifted very rapidly to the bumper after they leave the hold of the barge. I cannot say how long the tub would be in my view, however. I estimated that I was about 50 feet away from the place where the operations were going on. I believe that the bridge is a little above the elevation of the bumper, perhaps five feet. The light was sufficient so that I could see the contents of the tub [883-824] before it was dumped. The dumping is a very quick operation, but not as quick as the eye is. Just as soon as the

tub strikes the bumper and is released, it dumps by mechanical device pretty quickly. I know I could see into the tub at least a foot though I was 50 feet away from it and only elevated, possibly five feet higher than the bumper.

On the day when the "Theobold" was discharged I estimated that I was 20 feet away from the point where the tubs were dumping. The unweighed tubs were not running so badly as they were at night-time. The weighed tubs were all well rounded out, and had a good deal of fine coal in them. I could see them dumping. That is the only way I know the character of the coal. Some of the tubs that were weighed had more lumps in them than others; but, taking them one with another I would say that they were filled with about the same character of coal and were well rounded out; that is to say, they contained coarse and fine coal. Some had more fine coal than others—very much more.

- Q. Have you intended to give the impression, Mr. Smith, that all of those tubs which were weighed were filled to their greatest capacity and the coal was selected so that it would produce the greatest weight?
- A. Well, I don't know but that it would weigh more with more fine coal in than it would when there was not so much fine coal, but more lump coal.
- Q. Well, without reflecting on your testimony at all, Mr. Smith, and I do not intend to do that, did you not intend by your answer to create the impression that the tubs which were weighed were loaded with fine and coarse coal so that all of the voids so to

speak would be filled and that the coal so weighed would [884—825] weigh as much as could possibly be gotten into a tub of that size?

A. I was not trying to create any impression, whatever, any more than what I saw.

Q. Do we understand that from your observation of those tubs they were so loaded as that the weight when recorded would show the greatest amount of coal that could be put into those tubs?

A. Well, they were pretty near as full as they could be filled.

Q. Pretty near as full as they could be?

A. And safely carried to the hopper.

Q. And the coal was selected so as to produce the greatest weight?

A. I won't say that every time it was selected; I cannot say that.

Q. Well, it may have just so happened?

A. It may have so happened.

I only saw 12 tubs weighed on the night of December 18th. It might have been that more tubs were weighed, but how many more I do not know. I was away, of course, from 12 o'clock until 1:30, and for perhaps half or three-quarters of an hour at some time later in the morning. Mr. Powers and Mr. Enlow were with me when I went away. I judged that the operation of discharging coal from the barge seemed to proceed more rapidly in the night when I was there than in the daytime. I cannot say how much more rapidly. They could work the self-dumping tubs more rapidly on the "Wellington"

than the tubs which were operated by the men on the "Theobold." I did not time any of the discharges. So far as I know the coal that was being discharged from the "Wellington" was of about the same character as that which was being discharged from the "Theobold." I could on the night that I have mentioned tell a great deal about the character of the coal from watching it run down into the chute: but [885—826] I could not see it very well after it actually got into and began to run in the chute. The operation was very rapid. When there were lumps you could hear them rattle down the chute, and when there was fine coal the noise was different altogether. A portion of the chute I think was covered, so that I could not see the coal so well when it was running in the chute as when it was just dumped in. The mouth of the chute on the "Wellington" I rather think is covered. I don't think the covering extended to an elevation higher than the Captain's bridge where I was. I suppose the object of that covering is to keep the coal from falling overboard. I am not certain how near to the bumper the chute extended. I cannot tell much about the chute. I suppose the coal traveled maybe 18 or 20 feet after it reached the chute. There is only a foot or two distance between the chute and the tub as it trips. I do not mean to say that while the coal was traveling that foot or two, I could tell whether it was fine or coarse when the night operation was going on. You can see faster than the coal moves. I think I could

tell whether the coal was coarse or fine. My recollection is that I could.

My recollection is that the first time I visited the Folsom Street bunkers was in November, 1912; possibly I went as early as September of that year. I went a great many times in any event. I went there when ships were discharging. I cannot remember the names of any of the ships. I think the "Dunsmuir" was one though. I cannot remember the number of times I went there between September, 1912, and the first of February, 1913.

- Q. Is it not a fact, Mr. Smith, that from the 1st of September, 1912, until the 1st of February, 1913, you were keeping [886—827] tab, so to speak, for the purpose of knowing what ships were discharging at the Folsom Street dock?
- A. Well, I don't remember the dates; I only know that I was keeping track of it, but I cannot give you the date.
- Q. From some time in 1912, which you have here-tofore said, as I understood you to have been probably a month before November, until the 1st of February, 1913, you were making it your business, were you not, to keep track of the ships which discharged coal at the Folsom Street dock?
- A. Well, whenever I was instructed to go there I always went.
- Q. Were you not keeping track so as to advise yourself of the ships that were discharging at that dock during that time?
 - A. No, I was not keeping track of it.

- Q. But you did frequently go there between those periods? A. Yes, sir.
- Q. And you always went when a ship was discharging, as I understand you?
 - A. I cannot say that I always went.
- Q. Did you go at times when ships were not discharging?
- A. I have been there, but I did not stay there any length of time.
- Q. Is it not a fact, Mr. Smith, that the purpose of your visit was to observe the method and the manner of discharging coal there? A. Yes.
- Q. That having been the object of your visit there, Mr. Smith, can you not tell us whether or not you did go there when ships were discharging, and whether you went when ships were not discharging?
- A. I went when ships were discharging; I don't remember of being there very much when they were not.
- Q. You don't remember of being there very much when they were [887—828] not?
- A. I might have been there a few times when they were not discharging.
- Q. When you went there on the occasions when ships were discharging, how long as a rule did you remain?
- A. Well, I haven't any track of that, I cannot remember.
- Q. I suppose, without any reflection upon you, Mr. Smith, that you always approached these bunkers surreptitiously when you went there, did you not?

A. Well, I went the same as I do any time when I go around the waterfront, I just went there.

There is only one stairway that I know of going to the bunkers. I went up that stairway near the street. I think the Western Fuel Company knew who I was and what my business was there. I do not know whether I was always seen by them when I went there; still, I think I was approached by the weigher on every occasion. The first time I was up there Mr. Enlow and I went up, and Mr. Mayer came down, and he knew Mr. Enlow. I believe Mr. Enlow introduced me to Mr. Mayer, but I am not certain of that.

Q. On the day that you saw this train of coal move, did Mr. Mayer see you?

Mr. ROCHE.—He was not on the bunker at that time.

A. Not that I know of.

Mr. McCUTCHEN.—Q. What is that?

A. Not that I know of.

Q. You were not on the bunker then on that day when the coal train was moved?

A. I don't think I went up at all that day. [888—829]

Q. How far were you from the bunker when you saw this operation?

A. Well, I am not good on judging distances, but I was over about opposite the other dock.

Q. Opposite the other dock; on what elevation were you? A. On the street level.

Q. When you say about opposite the other dock,

can you not give the jury some impression about the distance?

- A. Oh, it may have been 150 feet.
- Q. What is the distance between those docks, if you know?
 - A. I don't know, if I did I could tell the distance.
- Q. Do you know what the height of those bunkers is above the street level? A. No.
- Q. Is there any railing or bulkhead or wainscoting, if you might so call it, along the sides of those bunkers where they overlook the street? A. Yes, sir.
 - Q. How high is that?
 - A. Oh, I don't know; I guess 4 feet or so.
 - Q. How high are the cars?
 - A. Well, they are higher than that.
 - Q. How much higher? A. Maybe a foot.
- Q. How much higher was the top of the loaded car? A. You mean how much higher—
- Q. (Intg.) How much higher than this railing along the side?
 - A. How much higher is the car than the railing?
 - Q. I mean the top of the load of coal.
 - A. You mean the coal above the car?
 - Q. Yes. A. Enough to see it.
- Q. Enough to see it,—but you cannot give us any notion in feet or inches, I suppose? A. No.
- Q. Pardon me for asking you again, Mr. Smith, but did you tell [889—830] me what you thought the height of the bunkers were above the street, that is, the level of the track?
 - A. I don't know how high.

- Q. Can you give us any impression?
- A. I would only be guessing at it.
- Q. Do you think they are 40 feet, or do you think it is 40 feet? A. Why, I guess so.
- Q. Were you to the north or to the south of the track while this operation was going on?
- A. I was at the south when they run over the scales going from the hoppers, and I was on the north side when they went back.
- Q. How far on the north side were you from the operation while it was going on?
 - A. About the same distance, I should judge.
- Q. Can you give us that distance any more correctly with reference to some monument or object that exists in that locality? A. No.
- Q. Were you as far south as Harrison Street when you were southerly from the bunkers on that day?
 - A. I don't think so.
- Q. Were you two-thirds of the way toward Harrison Street from Folsom?
- A. No. I could give you the distance better by the other dock that was there; I should judge about half-way.
 - Q. Where were you with reference to that dock.
- A. About opposite the end of it, the side of it next to the coal-bunkers.
 - Q. Were you standing on the Embarcadero?
 - A. I was standing on the bulkhead there.
- Q. Were you on a line north and south with the Embarcadero? [890—831]

Mr. ROCHE.—The Embarcadero does not extend down that far.

Mr. McCUTCHEN.—Doesn't it?

Mr. ROCHE.—It extends to the end of Steuart Street.

Mr. McCUTCHEN.—Q. Well, were you on a line extended southerly through the Embarcadero?

A. Well, I was about maybe 40 feet or 50 feet from the water, 40 feet maybe.

Q. Forty feet westerly from the water?

A. Yes, sir.

Q. Where were you with reference to a line drawn northerly and southerly through the scales-house on the Folsom Street bunkers?

A. My recollection is that the scales-house would be about on a line with the water.

Q. On a line with the water? A. Yes.

Q. Is it not your recollection that it is on a line easterly from the water?

A. I think it is about on a line, according to my recollection of it; I may be mistaken in that.

Q. With reference to the scales-house, you were 40 or 50 feet westerly from that line, and 150 feet southerly—

A. (Intg.) I did not stand in the same place all the time.

Q. Well, I am trying to get at from what position you saw that operation?

A. I was around in that locality, the best place I could get to see it.

Q. The best place you could get to see it, and the

best place you could get to see it was at a point 40 or 50 feet westerly from a line drawn northerly and southerly through the scales-house, and 150 feet southerly from the bunkers; is that correct?

A. Around in that part there, and without going up in the bunkers, [891—832] and I did not want to do that.

BE IT REMEMBERED that thereupon the following testimony was given and that the following proceedings occurred.

- Q. Do you know the name of the ship that was discharging at that time?

 A. On January 13th?
 - Q. Yes. A. The "Americano."
- Q. Do you know whether that was a foreign or an American ship? A. I believe it is a foreign ship.
- Q. Do you know whether she was represented at that operation by her captain, or by a clerk of the ship?

Mr. ROCHE.—That question is objected to as not being proper cross-examination.

Mr. McCUTCHEN.—He has told about the operation, your Honor, and about what was done. If he does not know it I don't care to press it.

Mr. ROCHE.—Of course, in the very nature of things he could not have known it, but irrespective of that, may it please the Court, it is not proper cross-examination.

The COURT.—The objection is sustained.

Mr. McCUTCHEN.—We except.

Q. Was the scales-house within your view at that time? A. Yes, sir.

- Q. Do you know whether anyone was in the scaleshouse at the time when this coal train passed over the scales, as you have said?
- A. I would not be absolutely certain, because it is hard to be sure whether there was somebody in there or not from that point.
- Q. From your position do you wish to be understood as saying that it was not possible for that coal to be weighed either as it passed [892—833] over the scale again going westerly, or as it passed over the scale again going easterly?
 - A. It was not possible to weigh it.
 - Q. It was not possible? A. No, sir.
- Q. Where was that train of coal when it began to move after you saw Mr. Thelan had left the bunkers?
 - A. When it began to move?
 - Q. Yes, when it began to move to the west.
 - A. Well, it filled at the hoppers and then went on.
- Q. From the time it filled at the hoppers until it stopped at a point, as I understand you, about midway over the street, was it within your view all the time?
- A. All the time with the exception of the time that I went along the street to get over to where Mr. Powers was, and I could not see it then.
- Q. Where were you at the time the coal train began to move from under the hoppers?
 - A. On the south side.
 - Q. You were on the south side? A. Yes, sir.
- Q. And did you remain on the south side until the train came to a stop, at about midway of the street?

- A. Yes, sir.
- Q. And could you see the train during all of that time? A. Yes, sir.
- Q. It was not out of your view during a fraction of a second during that operation?
 - A. No, sir, it was not.
- Q. You are quite positive of that, are you, Mr. Smith?
- A. I am positive that I could see it all the time, either between the cracks or on the top.
 - Q. What portion of it could you see?
- A. I think I could see the top of it all the way; I am not absolutely certain of that. I could see the train moving along. [893—834]
- Q. But you know that it was within your view during every fraction of a second of that time?
 - A. I know I could see it all the time.

I have seen the operation of weighing on the Folsom Street bunkers; it does not take more than a quarter of a minute to weigh a trainload of coal. Mr. Thelen, I presume, came down stairs from the scales-house. I did not know him to be Mr. Thelen. I do not recall that I saw him before that day. I could see that someone was in the scales-house, but not to recognize him. I know there were two men in the scales-house that day. Whether there were more I could not say.

Mr. McCUTCHEN.—Q. I call your attention to Defendants' Exhibit "C," and ask you if you recognize it as a photograph of a part of the Folsom Street bunkers. A. Yes.

- Q. I call your attention to a structure with a door and a window in it represented in that photograph; do you know what that is? A. No.
 - Q. You do not? A. No.
- Q. Do you know whether immediately to the south of the scales platform on the southerly track there is a structure? A. I think there is.
- Q. And yet you could see that trainload of coal every fraction of a second from the time it started to move westerly until it stopped at a point about midway of the street, could you.
 - A. My recollection is that I could.
- Q. What is your present recollection on that subsubject, after having looked at this photograph?
- A. I do not mean to say I could see all the train. [894—835]
- Q. Do you mean to be understood as saying that you could see any part of the train when it was passing that structure to which I have just called your attention?
- A. I could not see through the structure, but then I could—
 - Q. (Intg.) Then you could what, Mr. Smith?
- A. I don't think that structure is as wide as the train is long.
- Q. Now, I call your attention to another photograph marked Defendant's Exhibit "F" and I call your attention to a structure in front of which the coal train is halted; do you know what that is?
 - A. That is the thing that runs the cars.
 - Q. This structure runs the cars, the structure to

which I am pointing, and in which there is a door?

- A. I don't know anything about that.
- Q. You don't know anything about that?
- A. No.
- Q. Do you recall now that there is such a structure there? A. Yes.
- Q. I also call your attention to a portion of this photograph which, if I am correct, shows the top of the bulkhead to which I called your attention awhile ago; now, do you wish to be understood as saying, Mr. Smith, that at a distance of 150 feet southerly from this bunker, and at an elevation 35 feet lower than the bunker you could see that ore train for every fraction of a second?
- A. Why, certainly. This is higher than the bunker. Here is the top of the car. This is what carries it.
- Q. Yes, that is quite correct; this is the locomotive. I am asking you if at a distance 150 feet, and at an elevation 35 feet more than the ore train was, you still say you could see that ore train for every fraction of a second from the time it started to [895—836] move until it halted over the street?
 - A. I could see it from the distance where I was.
- Mr. ROCHE.—In the photograph, Mr. Mc-Cutchen, shown—

Mr. McCUTCHEN.—Now, Mr. Roche, please don't.

Mr. ROCHE.—All right.

Mr. McCUTCHEN.—Q. Do you know now, Mr. Smith, what is immediately in front of that little

house or shed to which I just called your attention, and immediately north of it?

- A. No, I don't. I think it is only the fence there.
- Q. That is to say, is it your recollection that immediately north of this small structure to which I have called your attention there is a fence?
 - A. Immediately north?
 - Q. Yes.
- A. I don't know what is immediately north; I don't just get the directions.
- Q. You know the points of the compass, of course; you know that the Embarcadero runs north and south?
- A. I would not be absolutely certain of the points of the compass down there.
- Q. Well, let us assume for the purpose of our discussion of the subject, that the Embarcadero does run substantially north and south. I don't know but what you are right about that; I don't know that that street does run due north and south. You know that one of those tracks down there is called the northerly track and that one is called the southerly track—I mean the tracks on the bunker, or do you know that?

 A. No, I didn't know that.
 - Q. You didn't know that? A. No, sir.
- Q. You know that there is a track over which the hoppers are located and into the cars on which track the hoppers discharge; you know that, do you not? [896—837]
- A. Yes, there is a track north and south of the track that the hoppers run on.

- Q. Now, then, I ask you this: Following the southerly track west of it until you reach a point immediately opposite this structure to which I have just called your attention in the photograph, what is in front of that structure?

 A. I don't remember.
 - Q. Do you know where the scales platforms are?
 - A. Yes, sir.
 - Q. Tell the jury where those platforms are.
- A. The Government scale is on the southerly track—the south track.
- Q. The Government scale is on the southerly track? A. Yes, sir.
 - Q. Is there another scale on the northerly track?
 - A. I am not certain but I think there is now.
 - Q. You think there is another scale there?
 - A. Yes, sir.
- Q. Is it not a fact that the scales platform, that is to say, the platform on which the coal train rests when the coal is being weighed, is immediately in front of this structure to which I have called your attention?
- A. Well, if it is I could always see the cars when they were being weighed.
- Q. That is not an answer to my question, Mr. Smith. You are not prepared to say whether the scales platform is immediately in front of that structure, are you?
- A. I think it is, but I could always see a portion of the cars when they were being weighed, I kept in that position. [897—838]

BE IT REMEMBERED that thereupon the following testimony was given and that the following proceedings occurred:

- Q. Were any of these visits which you say you made to the Folsom Street bunkers made at night?
 - A. Not on the coal investigation.
 - Q. What is that?
 - A. Not on the Western Fuel investigation.
- Q. Were any of the visits which you made between the 1st of September, 1912, and the 1st of February, 1913, made at night?
- A. I was down there one time in the evening with Mr. McNab and others.
- Q. Well, were you there on any other occasion at night between those dates?
- A. Well, I am around the waterfront so much at night that I don't know. I might have been around in that vicinity.
- Q. Did you go there with Mr. McNab between the 1st of September, 1912, and the 1st of February, 1913, at night?
- A. No, not at night; we were down there one evening, I don't remember when it was.
 - Q. Did you go on to the bunkers on that occasion?
 - A. We could not get in, I believe.
 - Q. Was a ship discharging them?
 - A. Not when we were there.
- Q. Can you state how many times approximately on the occasions when you visited those bunkers or went in the vicinity of the bunkers, you went on the bunkers rather than stationing yourself in the neigh-

(Testimony of John W. Smith.) borhood somewhere?

- A. How many times I went up on the bunkers?
- Q. Yes.
- A. Well, I went there with Mr. Enlow once, and I went there at another time with Mr. Selvage and a photographer. [898—839]
- Q. You went there with Mr. Selvage and a photographer after these indictments were found, did you not? A. Yes, sir.
- Q. I am speaking of the occasions when you made visits between the 1st of September, 1912, and the 1st of February, 1913.
- Mr. ROCHE.—That is, to the bunkers themselves, you are talking about?
- Mr. McCUTCHEN.—Yes, to the bunkers themselves.
- A. I don't think I was up there after that one time with Mr. Enlow.
 - Q. When do you think that was?
- A. I am not certain, but it might have been September or October, or somewhere around in there, or it might have been later.
- Q. Then on every other visit you made you stationed yourself somewhere in the vicinity of the bunkers?

 A. Yes, not on the bunkers.
- Q. On the occasion of your other visits to that locality, where did you station yourself for the purpose of observing operations?
- A. Well, no place in particular; wherever I could get the best view. That was always the case.
 - Q. Were you always accompanied by someone else

(Testimony of John W. Smith.) on the occasion of those visits?

Mr. ROCHE.—Just a minute. We object to this now, may it please the Court, upon the ground that it is not proper cross-examination, as well as being immaterial.

The COURT.—The objection is sustained.

Mr. McCUTCHEN.—We note an exception.

Q. Is there any circumstance that will enable you to fix any more definitely than you have the date of your visit in the evening with Mr. McNab to the bunkers or to the vicinity of the [899—840] bunkers? A. No, I could not.

Q. Was it while your investigation was going on?

A. My recollection is it was after the indictments were drawn.

Redirect Examination by Mr. ROCHE.

Mr. ROCHE.—Q. And upon that occasion, Mr. Smith, as I understand it, you found the door locked, and neither you nor Mr. McNab gained access to the bunkers?

A. We did not.

- Q. Upon the occasions when you went down to the Pacific Mail Dock, that is, while the "Korea" was coaling, you went there for the precise purpose of making observations, did you not? A. I did.
- Q. And in relation to the observations you have already testified to? A. Yes, sir.
- Q. As I understand your testimony on cross-examination, with the exception of the time you went with Mr. Selvage to visit the bunkers, accompanied by a photographer, you only went there upon one other occasion? A. That is all I remember at all.

Mr. McCUTCHEN.—That is, you mean upon the bunkers?

Mr. ROCHE.—I am talking now of about on the bunkers.

- Q. And upon that occasion you were met by the defendant Mayer who was at that time and had been acquainted with Mr. Enlow with whom you were? A. Yes, sir.
 - Q. He knew that Mr. Enlow was an inspector?
 - A. Yes, sir.
- Q. One other question along that same line: Upon other occasions when you visited the vicinity of the dock you stationed yourself at various localities on the dock itself? [900—841]
- A. Wherever I could see the coal cars weighing to the best advantage.
- Q. And so far as the discharge of coal from the chutes attached to the hoppers into the bunkers below, or anything of that kind, of course those matters were not within your observation, if they occurred?

A. No.

Q. You were being examined concerning some photographs by Mr. McCutchen, for the purpose of showing what you could not see. I call your attention to a photograph marked Defendant's Exhibit "A," and ask you to look at that photograph and state whether this photograph does not show with some degree of certainty and exactitude exactly what you could see upon the occasion to which you refer when this trainload of cars was run over mid-

way in the street and upon this tramway. Just look at that photograph. A. Yes, sir, I could see that.

- Q. Now, I call your attention to the tramway, and ask you if in this photograph you can see the top of the coal cars stationed upon the tramway, together with the head and shoulders of the man who was located upon that train?
- A. Yes, sir, I can, and the train is wider than this building here.
- Q. And can you also see the structure in this photograph to which Mr. McCutchen attracted your attention on cross-examination and as to which he cross-examined you at length? A. Yes, sir.
- Q. I will ask you if it is not a fact that two cars instead of four cars contained in a train—I will withdraw the question in that form and put it in this form: Is it not a fact that if [901—842] there were only two cars in one of these trains that you could see portions of the two cars as the cars were passing that structure?
- A. Yes, sir, the back of the train right here, always.
- Q. And this photograph likewise shows, does it not, the fence which is located upon the south side of the bunker? A. Yes, sir.
- Q. And you notice, do you not, in this photograph, that the fence between the shoreline and the off-shore end of that bunker is not as high as the fence which is located upon the south side of the tramway?

A. No, it is not.

Mr. ROCHE.—I would just like to show this to the

jury, and I would like to call the jury's attention to the cars located upon the tramway, with the head of the man who was either located upon or who was operating that train. I would like to ask the jury at this time to compare the fence on the south side of the tramway with the fence located on the south side of the dock itself, or the south side of the bunker. I want to direct the jury's attention to this structure that Mr. McCutchen was directing the attention of the witness to in the larger photograph.

This is the structure that Mr. McCutchen was examining the witness about (indicating).

Q. That photograph shows the south side of the dock and the bunker? A. Yes, sir.

Q. And the south side of the tramway?

A. Yes, sir. I was with the photographer when he took it.

Mr. ROCHE.—I would like the jurors to compare the fence on the south side of the tramway with the fence on the south side of that bunker. [902—843]

Q. I call your attention to another photograph, Defendant's Exhibit "B," and ask you if you recall that that photograph represents the north side of the bunker and the tramway? A. Yes, sir.

Q. That is, looking from the north in a southerly direction; is that correct? A. That is correct.

Q. And that correctly represents the fence which is located upon the top of the north side of the bunker and the fence located upon the north side of the tramway? A. It does.

Mr. ROCHE.—I would like to direct the attention

(Testimony of John W. Smith.) of the jury to that photograph also at this time. That is the north side of the bunker and the tramway.

- Q. That shows the stairway, does it not, by means of which you gain access to the bunker above?
 - A. Yes, sir.
- Q. How long, Mr. Smith, were you stationed on this bulkhead, or in the vicinity of the bulkhead to the south of the dock and to the south of the bunker on the date to which you refer?
 - A. January 13th?
 - Q. Yes, about how long?
 - A. I went there about 10 o'clock.
- Q. Between 10 o'clock and half-past 11, or about half-past 11, when you met the weigher, Thelan, coming down the stairs, were cars containing coal weighed? A. Up to that time do you mean?
 - Q. Yes.
 - A. Well, up to about 11 o'clock, or 11:30.
- Q. So that between 10 and 11 o'clock on that morning you did see a number of cars containing coal weighed? [903—844]
 - A. Between 10 and 11:30, yes, sir.
- Q. And when those cars would reach the scales, can you state whether they would stop?
 - A. Yes, all of them.
- Q. Did you talk with Mr. Thelen after he left the dock?
 - A. No, I was not close enough to speak to him.
 - Q. But you saw him? A. I saw him.

Recross-examination by Mr. McCUTCHEN.

Mr. McCUTCHEN.—Q. Were the hoppers within your view during the time you were stationed to the southerly and to the northerly of the bunkers on that day? A. Yes, sir.

- Q. You could see the hoppers, could you?
- A. Well, I suppose you call that hoppers, yes.
- Q. Well, you haven't any doubt about what they are? A. No.
- Q. Did you see any coal discharged from the hoppers into the bunkers without going into the cars?
- A. From my position I could not see the coal going into the cars on account of the fence. I could not positively say I could see it going in, I could hear it going in, I could hear it dumped, I could hear the coal going in.
 - Q. Into the cars? A. Into the cars, yes.
- Q. During the time that Mr. Thelen was absent on that day did the operation of discharging the ship continue—that is to say, did they continue to discharge coal into the hoppers?
- A. I think they stopped at about 11:30 apparently. They may have run up a few tubs after that, but very little.
- Q. But it is your present recollection that the whole operation ceased at 11:30? [904—845]
- A. I would not say but that they run up some tubs of coal after that.
- Q. But you haven't any present recollection of that? A. I think they did.
 - Q. Well, at any rate if they did, you think they

ran up very few? A. Very few, yes, sir.

- Q. That is to say, is it your present recollection that some tubs may have been run up after you saw this coal train moved?
 - A. They might have been.
 - Q. But you have no recollection on that subject?
- A. I would not positively say. I believe they were clearing up the ship.

[Testimony of Joseph Waterdoll, for the Government.]

JOSEPH WATERDOLL, a witness called for the United States and sworn, testified as follows:

I now live and have lived in San Francisco all my life. My general occupation is butcher. I have also been an electrician and a motorman. T have worked for the Western Fuel Company, entering the employ of that company, I guess, in 1905. Immediately prior to that time I was employed by the Dunsmuirs as a motorman on Folsom Street. I am acquainted with the structure known as the Folsom Street bunkers. As a motorman I was employed on the run on those bunkers. I operated a train of four cars, which were used for the purpose of bringing coal from one point on those bunkers to another point. I am familiar with the scales-house located upon those bunkers. I was employed by the Dunsmuirs for going on eight years, before I began working for the Western Fuel Company. When the [905-846] Western Fuel Company took over the bunkers my employment went right along with them. The runway on the bunkers, of which I have spoken,

was maintained by the Dunsmuir people. When the Western Fuel Company took over the bunkers they took up the plans to make more room for coal. Previously there had been planking on the inside of the bunker. I am familiar with the location of the tracks on top of the bunkers. The bunkers were floored on the inside and underneath the hoppers in the time of the Dunsmuirs. That was a solid flooring. After the Western Fuel Company took possession of the bunkers, they took away this permanent decking or flooring to which I have referred. They took it away and left the top of the bunkers open. Before the decking or flooring was removed, if coal dropped down from the sides of the cars, as the cars were being loaded, it would lie on the platform. I was employed by the Western Fuel Company for going on six years as a motorman. The electricity was supplied by an overhead trolley during the time of the Dunsmuirs. The Western Fuel Company continued to use the overhead trolley during a period of four months; then they resorted to the middle rail. The planking had been taken up, however, before the third rail was installed. As motorman it was my duty to dump and run the motor at the same time. The motor which I ran conveyed cars from various points along the dock and about the bunkers to the scales-house and back again over to the yard on the other side of the tramway. I am familiar with the runway or tramway extending across the street into the yards of the Western Fuel Company.

I know the defendant, Eddie Mayer, and have

known him ever since he came in contact with the Western Fuel people on the Folsom Street bunkers. He was not employed by the Dunsmuirs before the Western Fuel Company took charge. He was a boss up there; he was boss and weigher, both. He was my boss, and he was boss of the other motormen employed by the [906—847] Western Fuel Company, and all the men working upstairs, except the engineer. He gave instructions and directions to the men. I am familiar with the place upon those bunkers where coal was discharged after it was weighed. Those hoppers or towers into which the coal would be discharged would practically always be located over the inshore bunker. When coal was discharged into these cars and brought over to the scales and weighed, it would sometimes be carried to the pockets of the offshore bunkers and sometimes to the yard pockets. I got my instructions where to discharge coal from Mr. Mayer. He would indicate to me which particular pocket of the offshore bunker to put the coal in. I would follow the instructions given me by Mr. Mayer. The pockets of the offshore bunker were open. I frequently personally filled the first two cars in my train with coal. My dumper would fill the other two. The cars would be filled by hydraulic. I would stand on the side of the car and catch hold of the lever and turn it, and the weight goes up and the gates comes down. When I would want to stop the flow of coal I would shut off the conveyor. If the hopper gets away from me, she would be liable to bury my car. That is,

the weight would take too much of a run on the gate, and she would overflow; you couldn't pull up the gate quick enough. That occurs quite frequently. The coal would then roll off the car and down into the bunkers underneath. If we could help ourselves we did not try to overload the cars. It is pretty hard to say how often they would be overloaded. It is hard to answer; it occurred frequently off and on. It would occur more than twice a day on my train, more than four or five times a day I should say. The bunker into which the coal would fall when the cars would be thus overloaded would be the [907-848] inshore bunker. It sometimes occurred that I would receive a partial load from one of the forward hoppers, and then would have to back the train down to another hopper to complete the filling. bottom of the cars is shaped like an inverted "V." The cars are discharged by a door with a rope on each side which you pull. That permits the coal to fall down and slide off the car. I saw those cars being discharged before they went on the scales; not quite often, however. I received instructions from Mr. Mayer to do that. It was not possible for the weigher being seated in the scales-house on the Folsom Street dock to see beyond the first hopper, even if he turned and looked in an easterly direction, that is toward the offshore end of the dock.

If we had an overload on one car, we could not get on the scales with that load on account of a bog beam that lies across and the danger of breaking down the scales; so that we would open one side of the

and the coal would drop down into the bunkers. I never received any instructions from the defendant Mayer to run these cars backward from one of the forward hoppers and discharge the coal without its being weighed.

I have said that the ordinary train upon the Folsom Street bunker consisted of four coal cars. When I first commenced to work for the Western Fuel Company the motorman stood in front of the cars. That had been the practice before that date also. There would be two dumpers upon a train located between the two cars they were supposed to dump, so that there would be one dumper between the first two cars and the other dumper would be between the last two cars. Two trains were ordinarily run upon the Folsom Street bunkers. If they were hoisting very fast they would sometimes throw in two extra cars, [908-849] so as to keep the hoppers empty. That would make a trainload of six cars, but they would not have an extra dumper. The two dumpers would take care of the whole six. After the Western Fuel Company took charge of the Folsom Street bunkers they took one dumper off each train, and I then took my station between the two cars instead of at the head of the cars. I would operate the train by a controller. Thus, I would take the place that was formerly occupied by the dumper that was let out. In addition to operating the train, I would then be dumping for the first two cars. I received instructions from the defendant Mayer to dump a car into the bunkers before it would

reach the scales. I did that. It is pretty hard to say how often. I never kept track of that matter. It was certainly done more than once. I never noticed that done with the other train—I was too busy taking care of my own train.

I know of the beam that lies across the bunker and underneath the scales-house. I have seen that beam come in contact with coal upon the cars. I would myself throw off some of the coal so it would not strike the beam, because otherwise there would be danger of breaking down the scales. During the time I was working for the Western Fuel Company the scale was interfered with by reason of that beam coming in contact with the lumps of coal. When coal would strike that beam it would fall down between the cars. When I would shovel coal off the top of the cars to prevent it coming in contact with the beam, the car would not have gotten underneath number one hopper. Each train would take care of two assigned hoppers. I could not say how often it would occur during every week that I would open a chute attached to one of these towers, and the chute would remain open so that the coal would continue to drop along the sides of the car and into the bunkers below. It would not occur every day. Sometimes it would maybe occur more than once upon a particular day. I [909-850] have myself shovelled coal that would fall from the cars into the bunkers below, and have seen other men doing it. I remember the time when planks were placed temporarily under these hoppers. When the bunkers would

be kind of full we would take the planks away. Sometimes I saw that temporary decking removed. I remember that upon occasions inspectors in the employ of the Government would visit that dock. I never received any instructions from the defendant Mayer in connection with such visits. In relation to the inspectors, Mr. Mayer would come down and say, "Cheese it, Joe! Look out for them; there is an inspector coming up the stairs." This temporary decking would be taken out at various times during the process of discharging a ship in order to make more room so that they could dump underneath the hoppers. The temporary decking would be placed on the sides when, it would be taken up, that is against the bulkhead or fence. I used to load from hoppers numbers one and two, and sometimes from numbers three and four. If my car was overloaded, I would pull the rope and let half of it go into the bunker below and then load her up again.

Q. Why would you do that?

A. I did not want to hit the top of the beam and break the scales. I never, under the instructions of any body, after I loaded by train moved it backwards. At the request of Mr. Mayer I discharged a train load of coal into one of the pockets or compartments of the inshore bunkers without bringing it on the scales.

Cross-examination by Mr. McCUTCHEN.

I live in San Francisco at 1312 Valencia Street, and have a wife and seven children. Within the last ten days I have been away from home two nights down

at Colma. I first knew that I was to be a witness in this case about three weeks [910-851] ago. Two men came up to my house who I suppose were Government officials. The name of one of them was Plummer. I first saw these two men day before yesterday, because I was away when they came up to my house before. I know the Powers boys, but have not talked to them about this case. Last night I spent over here in a hotel. The Government officials put me there. They locked me in and put the key in their pockets. I did not know that they were going to lock me in when they took me there. They did not ask my permission. It was three days ago that I first met these men. They told my wife that they wanted me as a witness in this case after I had skipped out. I surmised what they wanted me for. They left me in the hotel from eight o'clock in the evening until seven o'clock in the morning. Then Mr. Sullivan came to me in this building. I had not seen Mr. Sullivan up to three days ago. I was taken out for my meals by the two Government officials that "grabbed" me. I understood that I was actually under arrest, and that had been my understanding from the time they first took charge of me. I did not know how long they were going to keep me. I understood, however, that they would keep me until I testified in this case. They did not tell me what they wanted me to testify to. One of these Government officials always remained with me during the feeding hour; and when I got through he took me back to this building and put me in a room and

turned the key, and I remained under lock and key in that room for the greater part of three days. They gave me a "Call" to read. They did not serve any warrant upon me, but they did tell me I was under arrest.

When a lump of coal got caught in the chute so that you could not close the gate, I always tried to close it as quickly [911—852] as possible. I did not want the coal to escape in that way, and when it did escape in that way it was entirely unintentional on my part. Nobody ever told me to allow it to escape in that way. I was told not to overload the cars, and I tried to avoid doing so. Those instructions were given to me both before and after the decking had been removed from the Folsom Street bunkers. Sometimes the chutes would get clogged more than once a day.

Since I left the Western Fuel Company my employments have been as follows: In the latter part of 1912 I engaged in the service of a man who owned a team out in the Mission, and worked for him a month and a half. After that I went up to the Union Lumber Company's plant, and remained there until June. Then I came back here, and went to work in a fruit stand. That is all the work I remember performing since I left the employ of the Western Fuel Company three years ago. My employments, therefore, have not been continuous, and have been very infrequent. I happened to leave the service of the Western Fuel Company because there was a wreck upstairs; two trains ran into one another. I was coming back and

(Testimony of Joseph Waterdoll.) the switch was turned, and I ran into the other train. I was then dismissed, right there.

We were told both by the custom-house officer and by Eddie Mayer not to load the cars so high that the coal would come in contact with the beam in front of the scales-house. Eddie told me that, and told me that frequently. If we ran into the beam the scales would break. The reason I jumped up so quickly to close the gate when the chutes were running very freely was that I did not want to have the case overflowing, because if the custom-house officer came down and caught that running, [912—853] he would "holler his head off at me." When the custom-house inspector was not there I understood that Eddie Mayer wanted me to open the gate of the hopper and let the coal run into the inshore bunker.

Q. You did understand that? A. Yes, sir.

Q. But notwithstanding that you said on your direct examination you didn't want to allow these hoppers to become clogged under any circumstances, did you not? A. Yes, sir.

Q. Didn't you say that? A. Yes, sir.

Q. And now you say that Eddie Mayer did want you to open those gates and allow the coal to flow into the inshore bunker?

A. That was when we were going back; he would tell you to do that when going back to the pockets.

Q. What do you mean by that, by going back to the pockets?

A. There are pockets, from 1 to 22, down at the ends of the bunkers.

- Q. That is to say, you mean when the cars are unloading at the offshore pockets?
 - A. Well, I would not go back empty, I am sure.
- Q. I said unloading and not unloaded at the offshore pockets. A. Yes, sir.
- Q. Those offshore pockets are to the extreme easterly end of the bunkers, are they not? A. Yes, sir.
- Q. And the inshore bunkers are to the westerly end of the wharf, are they not? A. Yes, sir.
- Q. Now, I will ask you again: did you understand from the instructions given to you by Eddie Mayer, that he wanted you to open the gates to the hoppers and allow the coal to flow into the inshore bunkers without being weighed?
- A. He never said the hoppers, he said the cars. [913—854]
 - Q. He did not say the hoppers? A. No.
- Q. Then when you said a few moments ago he did want you to open the gates of the hoppers to allow the coal to flow into the inshore bunkers, you were mistaken?
- A. No, sir, that would be running your car underneath to load up your cars and go back with them, back to the pockets.
- Q. Who first suggested to you—well, I will withdraw that now. What do you understand by backing up after a car is loaded? A. Backing up?
 - Q. Yes, after a train is loaded.
 - A. Well, backing up is not going ahead, I am sure.
- Q. The locomotive always faced the west, did it not, or as a rule it did? A. To the west, yes.

Q. Then, when you say that you were never told to back up you mean you were never told to back out toward the offshore bunkers after you had loaded a train with coal?

* * * * * * * * *

A. Well, you cannot go over that way, you have to go up around the scales-house and come down the other way.

Q. That is it, you had to pass the scales-house and get on to the north track; is that what you mean?

A. Yes, sir.

Q. And in doing that you would not get out to the offshore bunkers at all, would you, until you had passed the scales-house? A. No, sir.

Q. So in that operation you would pass the scales twice—that is, you would pass the scales platform on the southerly track and you would pass the scales platform on the northerly track, would you not?

A. Yes, sir.

Q. That is correct, is it not? A. Yes, sir.

Q. And during all of that time the Government weigher would be in [914—855] the scales-house, would he not? A. Yes, sir.

Q. And those are the occasions under which and in which Eddie Mayer advised you to dump coal without having it weighed? A. No, sir.

Q. Well, what are the occasions then?

A. The occasions are when you are on the inside, when you are getting the coal out of the hoppers, he would tell you to run a train back to the pockets and dump it.

Q. He would tell you to run the train back?

A. Yes, without getting weighed.

Mr. ROCHE.—That is what I meant before, Mr. McCutchen, when I made that objection.

Mr. McCUTCHEN.—Q. All of those hoppers discharged in to the cars on the same track, don't they?

A. Yes, sir.

- Q. And is it customary for one train to pass another on the track while the four of them are being operated?
 - A. There are two tracks on the inside.
 - Q. There are two tracks on the inside?
 - A. Yes, sir.
- Q. When he told you to run back to the pockets, to what pockets did he refer?
- A. It is all according to what pockets the barges are taking out of.
 - Q. You were going to the offshore pockets then?
 - A. Yes, sir.
- Q. You were not told to dump coal into the inshore pockets? A. There are no inshore pockets.
 - Q. Inshore bunkers? A. Inshore bunkers.
- Q. Those instructions related in every instance to the delivery of coal to the offshore pockets?
 - A. Yes, sir. [915—856]
 - Q. And into the barges? A. Yes, sir.
- Q. And you delivered a lot of coal while you were there into the offshore pockets and into the barges which was never weighed; is that it?

 A. Yes, sir.
 - Q. That was a common occurrence, was it?
 - A. Yes, sir.

- Q. And if that coal was not weighed of course no record was kept of the weight of it? A. No, sir.
- Q. When you say you were told to back out to the offshore bunkers, did you always have coal on, which came from a hopper, or coal which came from the yard?
- A. You had to get coal to weigh on the scales to go on the bunkers.
 - Q. Will you repeat that?
- A. You had to go and take coal and weigh it and take it to the offhand bunkers.
- Q. You had to take coal and weigh it to take it to the offhand bunkers?
- A. To take it around and dump it in the offhand bunkers.
- Q. Do you mean you had to take coal and weigh it in order to convey it to the offshore pockets?
 - A. The offshore bunkers.
- Q. Do you make any distinction between the offshore bunkers and the offshore pockets?
 - A. The pockets and the bunkers are the same.
 - Q. The pockets and bunkers are the same?
- A. The bunkers are wide open and the rest are only pockets; it holds about 60 tons.
- Q. You draw a distinction between bunkers and pockets?
- A. Yes, sir. From the end of the bunkers then come the pockets to the end of the wharf.
 - Q. Those are offshore pockets? A. Yes, sir.
- Q. These have sometimes been spoken of as offshore bunkers. The rest of the bunker is what you

coal the inshore bunker; is not [916-857] that it?

- A. Offshore bunkers.
- Q. Well, I don't think that is important.

Redirect Examination by Mr. ROCHE.

It was three days ago that Mr. Sullivan questioned me about this matter, but he did not see me in this building before three days ago. I remember a statement being taken down in writing as he questioned me. He is the only person who questioned me concerning what I knew about this case. He told me he wanted the truth. Nobody asked me to testify to what was not true.

I was under lock and key in this building for three days. The room is a short distance from this court-room. When they went out they would not let me go out.

I was not served with a subpoena in this case. When these men came to my home and when I heard about this case I tried to get away. They finally got hold of me. That was before Mr. Sullivan questioned me.

(A statement was here made for the record by counsel for the prosecution that the date on which Mr. Sullivan questioned the witness was the 2d day of December, 1913. This statement was made at the request of counsel for the defendants.)

[Testimony of E. D. Enlow, for the Government.]

E. D. ENLOW, a witness called for the United States and sworn, testified as follows:

I live in San Francisco. For the past twenty-one years I have been almost continuously an inspector

(Testimony of E. D. Enlow.)

of customs in the Government service. [917-858]

I know where the Folsom Street bunkers are, and I am familiar with pier No. 42. I made a visit to said pier in December, 1912, in company with John W. Smith and David Powers for the purpose of making certain observations in connection with the steamship "Korea." I first visited that pier on December 17th, and remained there about two hours. the barge "Theobold" that we were watching. We went there during the afternoon. It is my recollection that we went on the steamer "Persia," in the library, on the opposite side, and looked across. I do not remember whether that afternoon I went aboard the "Korea" myself, or not. I was on the deck of the "Persia" a portion of the time. We looked out through the library window when we were there. think I was making observations from the library about one hour. I was on the deck about 15 or 20 minutes. In that hour and 15 or 20 minutes, there was one weight taken. When in the library of the "Persia" I was, I suppose, about 100 feet from the "Korea." We were close enough to observe the quantity of coal that was being hoisted in the buckets and weighed from time to time. When they took the weight the tubs were well filled, and we saw but little lump coal in them; but when they were not weighed we saw quite a number go up that were not well filled,—a number of times, for instance, you might take a two-bushel sack of coal and empty it in the tub without making it any fuller than when they were weighed. Occasionally, therefore, there might be a

(Testimony of E. D. Enlow.)

difference of a sack of coal between the tubs that were and were not weighed respectively.

I recall visiting the steamship "Korea" again on the night of December 18th with Mr. Smith and Mr. Powers. We reached there about seven o'clock, and stayed until six o'clock the next morning. We left at midnight, however, to get something [918—859] to eat, and were away then, I suppose, for about an hour. The hoisting operations then ceased, because the stevedores were getting their lunch. We got back just about the time they started hoisting again. In the period from one o'clock until six in the morning, there was about an hour when we were not on the bridge. We were then up forward. We were investigating a little matter connected with smuggling. The rest of the time we were on the captain's bridge of the "Korea." It was at a point about 100 feet from where they were discharging the coal. think they were discharging from the middle hatch of the barge. When I say 100 feet, I am measuring from the end of the barge to the place where they were weighing the coal. The barge was the "Theobold." I don't remember whether she had an automatic, dumper, or whether men were dumping, but I do remember that there was difficulty a number of times about the tubs turning over. There was no difficulty in tripping the buckets. It was about 40 or 50 feet from the place where we stood on the captain's bridge to where the tubs discharged. There was a cluster of lights on the docks outside of pier 44, and then there was a light or two on the barge. (Testimony of E. D. Enlow.)

I don't remember whether there were one or two lights on the barge close to where they were weighing. I don't recall any light in the vicinity where the buckets were being tripped. There were two weights taken that night between 7 o'clock and 12 o'clock; four tubs being weighed at 8:30 P. M., and four at 11:10 P. M. We reached there about 7 o'clock and we were aboard a short time before they commenced to hoist. I do not remember how long before but we did not go aboard with the crowd of stevedores. I could, from the position occupied by me on the bridge, see the contents of the tubs of coal. I noticed that when they were weighed they were well filled, and when they were not weighed there were many of them that were like in the daytime, only worse. We looked down on the tubs from where we were, and we could see down at least six or eight inches along the side of the tubs. A sack or two of coal could be poured in some of them without running over. Only one weight [919—860] taken between one o'clock and six o'clock, when four tubs were weighed; that was at 2 A. M. The little matter of smuggling that necessitated our attention up forward occurred about four o'clock in the morning. The barge that was discharging that night was the "Wellington." The "Theobold" was the barge in daytime. From one o'clock until seven o'clock in the morning the condition, so far as the contents of the tubs were concerned, was about the same as before midnight. I was, from my position on the captain's bridge, able to determine to some extent the

quality of the coal in the tubs that were weighed compared to the tubs that were not weighed. When the tubs were weighed they were well filled tubs: you could not see much lump coal; but when they were not weighed, we would quite frequently see big lumps of coal down in the bucket. I made some further observations for the purpose of determining the quantity and quality of coal discharged from time to time upon these barges; for instance, on January 6th, 1913, I watched the operations of the barge "Comanche" discharging into the "Siberia." Those observations were made in the daytime. I was there from one P. M. to three P. M. Weights were taken but once in that period and the quantity and the quality of the coal were about the same as I have just testified to.

On the night to which I have testified I could tell just where the Government weigher was located, but could not recognize him well. When weights were taken he came up to the middle hatch from up forward on the barge. When weights were not being taken, he would be just about where the bulkhead of the vessel would be. I remember seeing a lantern kept at that place. That was about 30 or 40 feet from the hatchway. I suppose the weigher was tallying coal. I could not, however, see him actually doing so. There were two weighers up there together.

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Cross-examination by Mr. McCUTCHEN.

Mr. Parks was one of the weighers who was on the "Wellington" on the night when I made my observations, but I did not know the Government weigher. The latter was near the bulkhead so far as I could observe him, nearly all the time when they were not weighing. I do not remember seeing him leave the steamer or vessel. It is my impression that the weighers were sitting down up there. It was in the open, but somewhat protected. It was a very nice night in December. My best recollection is that the distance from the bridge of the "Korea" to the point where the tubs tripped was 30 or 40 feet. The bottom of the hold of the barge was just like a dark room. You could not see very far down in it. The coal was being taken from the center of the barge. The bow of the barge extended a little beyond the bridge where we were located. The hoist of the "Wellington" is about midway on the barge. I have no impression of the length of the "Wellington." It could be, I think, as much as 250 feet; and if it was, and the hoist was in the middle of the barge, then it might be that I was as much as 50 feet from the place where the tubs tripped. That is only a guess, however.

When we made our observations from the library of the "Persia," she was lying at Pier 42, moored alongside the pier. The "Korea" was at Pier 44. I guess that the distance over to the barge was about 100 feet. I think the elevation of the library floor of the "Persia" was a little higher than the eleva-

tion of the chute into which the coal was being discharged. The library is on the deck above the main deck. The boat is rather a small boat. The library is on the uppermost deck. I would say that the top deck of the "Persia" and the top of the chute into which [921—862] coal was to be discharged would be about the same height. The tubs tripped away from us, so to speak, rather than toward us. I would guess that a few seconds elapsed while the tub was within our vision, after it appeared above the hatchway, and before it tripped into the chute. I think that it does not take more than half a minute for the entire operation of picking the tub out of the hold, the discharging of it into the chute, and the returning of it to the hold. I know that the tub rises very rapidly.

- Q. Very rapidly; now, do you think that with a tub rising very rapidly, as you have described it, and dumping away from you, that you could tell very much about the capacity to which those tubs were filled, standing in the library of the "Persia," at a distance of 100 feet from the operation?
 - A. Yes, sir.
 - Q. You think you could? A. Yes, sir.
- Q. And do you think you could also tell, Mr. Enlow, whether those tubs were loaded with fine coal or coarse coal?
 - A. I could tell the top, whether it was fine or lumps.
- Q. That is to say, if you could see the top, if the tub remained within your vision long enough for you to see the top, you could tell at a distance of 100 feet

(Testimony of E. D. Enlow.) whether it was fine coal or coarse coal?

- A. Yes, sir.
- Q. And that is true, equally, is it not, with reference to the tubs which were weighed; is not that true?
- A. Well, the tubs which were weighed, were in your view longer than those that were not weighed; you always have plenty of time to see the nature of the coal.
- Q. When you talk about the quality of the coal, you are simply referring to the quality of the coal that is at the top of the [922—863] tub, are you not? A. That is all.
- Q. And you cannot tell anything about the remainder of the coal that is in the tub, either when it is being weighed, or when it is being dumped from that distance, can you?

 A. No, I could not do that.

I first began to visit the piers of the Pacific Mail Company in 1892. I was inspector of customs and I went down there to be assigned to duty. I did not at that time frequently go upon the barges that were coaling the liners. I first began to go upon the barges after the Pacific Mail did away with that overhead way of coaling vessels. From that time on I went down if I had a detail. I sometimes went on the barges then. I saw the way the liners were being coaled. I saw the tubs that were weighed and the tubs that were not weighed, but I was making no investigation right then. I was first detailed to make an examination of this particular matter in the latter part of 1912; it may have been in September, 1912. From September, 1912,

up to February, 1913, I was probably a dozen times on pier 42 or pier 44 while a Pacific Mail liner was being coaled. I was not on a barge that many times. I did not always witness the coaling operations for any length of time, but I only waited a few times long enough to observe the weighing. I passed the Folsom Street bunkers many times, but went up on them only once. I have been in the vicinity of those bunkers for the purpose of observing what was going on there a few times. Steamers were discharging on some such occasions. I went there for the purpose of watching things, and I went under instructions. I believe we went down there once or twice when a ship was not discharging without instructions for investigating. I went perhaps half a dozen times between December, 1912, and April, 1913, to find steamers discharging. [923—864] A portion of my investigations took place prior to these indictments.

Q. Let me ask you this: You were carrying on your investigations rather quietly, without making your presence known, were you not?

A. Well, when up on top of the bunkers, anybody could see us there.

Q. It is quite apparent, Mr. Enlow, that when you went up on top of the bunkers and encountered Mr. Mayer, that Mr. Mayer knew you were there; that goes without saying. Now, I am asking you whether the investigation which you were making during the visits you were making down there, while these ships were unloading, were not made by you quietly, and

(Testimony of E. D. Enlow.) intentionally made quietly.

- A. I must say they were rather quiet, but as to any concealment, I don't think I was ever concealed down there; I was right out on the wharf between Folsom 2 and Harrison Street, and part of the time I was over on Harrison Street; I was never concealed.
- Q. I am not reflecting upon you at all, Mr. Enlow. The point I am trying to develop from you is this: It was not your intention during those visits, to have your presence known to Mr. Mayer, or to anybody representing the Western Fuel Company, was it?
 - A. That is correct.
- Q. Those investigations which you say you were making quietly and in the manner you have described, were all made prior to the indictments which were returned in this case, were they not?

A. It is my impression we made some of them since.

Mr. McCUTCHEN.—Q. What part of your investigations, [924—865] according to your present recollection, was made after the return of the indictments? I will put it in another way. How many of these half dozen visits that you made to the Folsom Street wharf for the purpose of observing the manner of doing things there were made after the finding of these indictments.

A. Maybe one or two; I don't know that we were ever sent down there, that is, detailed specially to go to the wharf and watch the discharge.

Q. That is, you don't know that you were specially

detailed to do that after the indictments were found?

- A. I don't know that I was.
- Q. And is it not your present impression that you were detailed to go down there at least half a dozen times and observe the method of doing things, before the indictments were found?
- A. Well, we were not specially detailed half a dozen times, but we were given to understand that in our investigations along the waterfront, that they wanted us to make somewhat of a specialty of the discharge of drawback coal, and the discharge of vessels.
- Q. The discharge of drawback coal and the discharge of vessels; is that correct?
 - A. Yes, bringing coal from foreign ports.
- Q. Were not those instructions in force for a period of at least four months before the finding of these indictments? A. That may be correct.
- Q. That may be correct; and assuming that they began along about September, would you not say that you were down in the neighborhood of the Folsom Street bunkers, where you could observe the unloading of coal, at least a dozen times before the first of February, 1913?
- A. We didn't go there especially for that purpose. [925—866]
- Q. I understand that, Mr. Enlow, but whether you went there especially, or not, were you not in a location down there at least a dozen times while ships were unloading from which you could observe the method and the manner of unloading?

- A. Well, if I stayed and watched long enough, I probably might have detected something, but I passed by there more than a dozen times.
 - Q. More than a dozen times?
 - A. Well, along the waterfront.
- Q. And did you not report to your superior, from time to time, that ships were discharging there, and that the opportunity was afforded to see just exactly what was going on?
- A. I have no recollection of that, of formal reports of that kind.
- Q. I am not speaking of formal reports; you talked to Mr. Tidwell about this, did you not—I am not asking you what you told him?
 - A. Yes, sometimes.
- Q. Do you remember that from time to time you called Mr. Tidwell's attention to the fact that there were steamers discharging down there?
- A. I may have spoken about it, that such and such a vessel was discharging.
- Q. But your recollection is not very accurate on that subject? A. No, not very.

Redirect Examination by Mr. ROCHE.

I was on the bunkers themselves on one occasion during this period of time. When I passed by the bunkers or loitered in their vicinity I would spend hardly a few minutes loking at the bunkers. [926 867]

Q. Did you at any time station yourself in the vicinity of the Folsom Street bunker, either under instructions or not acting under instructions, during

the noon hour, for the purpose of observing what operations, if any, would take place during that time?

- A. We did, a time or two, at the noon hour.
- Q. Who was with you upon either one of those two occasions, if the occasions were more than one?

A. Mr. Smith and Mr. Powers. I think Mr. Powers was with us at one time.

- Q. Did you notice anything with reference to the discharge of coal upon either one of those two occasions?
- A. Well, we watched them finishing just at the noon hour, and watched the weighers leave, and the stevedores—the most of them, and sometimes they would go on discharging and filling in to the hoppers, as I understand.
- Q. That is, you saw coal being discharged into the hoppers, as you understand it, after the noon hour, and after the weighers had left? A. Yes, sir.
- Q. Now, from the position occupied by you upon the street level, were you able to see the mouths of any of the chutes leading from the hoppers?
 - A. No.
 - Q. You are certain about that, are you not?
- A. I was over at Harrison Street when I made this observation that I have in my mind just now.
- Q. You are just talking now about one observation? A. Yes, sir.
- Q. When they continued discharging into the hoppers after the noon hour, or after the weigher had left? A. Yes, sir. [927—868]
 - Q. But, calling your attention to all of these ob-

servations which you made from the level of the street, that is, from the docks, or the streets in the vicinity of the bunkers, were you able at any time to see what was being done upon the bunkers, themselves, provided the cars were not being operated?

- A. No, you could not tell.
- Q. You could not tell whether the coal was being dropped into the bunkers, or not, could you, from the street? A. No, I could not.

Recross-examination by Mr. McCUTCHEN.

I recall being there at Harrison Street only once during the whole noon hour.

The date when I made the observations at Folsom Street was January 6th, 1913. The ship there at the time was the "Drummuir," but I do not know what kind of coal she was discharging. I went down a short time before the noon hour and remained there until about one o'clock, until after the weighers returned. I think I was on the bulkhead a portion of the time, between Folsom Street and Harrison, and over on Harrison the greater part of the time. It was 25 minutes after 12 o'clock when they stopped discharging into the hopper. I did not see any coal going out of the hoppers. When I say discharging I mean that the hoist was working.

I do not know and have not known the name of the Government weigher who was on the "Wellington" the night when I was stationed on the bridge of the "Korea." I know the greater part of them but there are a number of them that I cannot recall the name

of. I made no effort to find out his name. If I did not actually know the man, the conditions there were such that I could not have gotten a good enough view of him to identify him afterwards. The weigher that night, when the weights were taken, stood at the hatch. [928-869] I do not know that there are two types of scales on the barges, but I know that on that occasion when they wanted to take weights a couple of men had to come up out of the hold of the barge to assist in the operation. The weigher would stand near the scale. The men who were conducting the weighing would not be vertically underneath the bumper. They would be half the width of the "Wellington" and half the hatch of the "Wellington" distant from a vertical line drawn from the bumper down. In fact, they would be practically the width of the "Wellington" away from such line. I cannot recall any lights near the bumper. I think I was something near 100 feet from the weigher when the weighing operation was being conducted. From the bridge of the "Korea," where I was standing, the deck where the customs weigher was standing would be, on a guess, 40 or 50 feet distant. The bumper would be about the same distance above the deck of the "Wellington." The customs weigher was standing on said deck on the opposite side of the barge from the "Korea." My recollection is that the scales were not moved that night. It is not a fact that the light was too poor to detect them moving the scales, but simply that I did not notice that item particularly. I do recall that the

scales were near the hatch when the weighing was going on. It appears to me that they were not over the hatch.

Further Redirect Examination by Mr. ROCHE.

I did not go down there for the purpose of paying any particular attention to the location of the scales, or whether the beams of the scales moved up or down, or whether the weights were taken on an even beam, or a rising or a falling beam. [929—870]

Further Recross-examination by Mr. McCUTCHEN.

I have no independent recollection of my observation of the "Comanche" delivering coal at Pier 42 or 44 to a liner. I only remember that from my memorandum or report to Mr. Tidwell at that time.

[Testimony of Samuel Griffin, for the Government.] SAMUEL GRIFFIN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now live and have lived all my life in San Francisco. I am a laborer or teamster, or do anything that comes along. I have recently been in the City and County Hospital. I was first employed by the Western Fuel Company after the Dunsmuirs left. I am now and for some years last past have been familiar with the Folsom Street bunkers. I would be located there upstairs, on top. I should judge that I worked six or seven years for the Dunsmuirs before the Western Fuel Company took over the property. I was located upstairs on the bunkers with both concerns. My employment with the Duns-

muirs was only occasional. I would be employed by the Dunsmuirs every time a steamer came in. I was running a motor. The bunkers were then planked, and were so planked during the entire time of my employment with the Dunsmuirs. There were then three tracks on top of the bunkers during the entire time that I worked for the Dunsmuirs. The power was then applied through an overhead trolley. When the Western Fuel people took charge, the electric system then in vogue was changed. They used the third rail. I guess I worked for the Western Fuel Company about three or four years off and on, that is, every time a steamer would come in. During that time they always used the third rail. When the Western [930—871] Fuel Company took charge, there was a kind of plank, I guess, about four feet wide on the tracks, for the coal coming out of the hopper, that was supposed to save the coal from going into the bunkers, and it was this planking over the bunkers, of which I have spoken, was taken out altogether. I could not say just when that was done, but I know it was considerably after the Dunsmuirs left the place. When the Dunsmuirs were there, if coal dropped down on top of the bunker, it could not go below; but after the Western Fuel Company took up the flooring, if coal would drop down it would go down into the bunker.

I am familiar in a general way with the location of the offshore and inshore bunkers respectively, and was familiar with them during the time to which I have referred in my testimony. My immediate boss

when I was working for the Western Fuel Company was Eddie Mayer. There were sometimes two and sometimes three motors used there, usually two. There were four cars in a train. The bottom of a car was shaped like an inverted "V." The cars would be discharged by pulling a rope that would open the side door like wings. When I was working for the Dunsmuirs, I would be located in front of the motor. When the Western Fuel Company took charge, I would be located between the two front cars. At that time the motorman himself would act as dumper for the first two cars, and there would be a dumper for the last two. I would be located between the two cars, because I was supposed to run the motor and dump the car. There were four hoppers upon the dock. They were numbered. I am familiar with the location of the scales-house. Number one hopper was nearest to that scales-house. Number two, three and four follow in order. I am familiar with the fact that these hoppers or towers would ordinarily be located over the inshore bunkers. Each train would have particular towers to take out of. One train would take hoppers three and one, and the other two and four. The cars would be located underneath the hoppers when [931-872] loaded. I recall an occasion when temporary planks were placed around the hopper, but they were not always there. When they were taken up they would be placed alongside the hoppers. The cars would be loaded by a chute from the hopper, which would be opened by compressed air. The dumper would turn

on the compressed air. It would depend on the dumper how full the car would be loaded before the chute would be closed. On an average there was pretty near a ton loaded on each car. Sometimes the cars would not be full and sometimes they would be overflowing. The overflow would be thrown off and would go down into the bunkers. I could not tell exactly how often I would see that. Sometimes a lump of coal would go into the chutes, and hold the chute open. Then the dumper would have to run upstairs and try to get the lump out. In the meantime the coal would come out, and what would not go down into the bunkers would be thrown in by the men. The coal would continue to flow into the bunkers until the lump was taken out, that is the fine coal would flow. Sometimes it would take from two to five minutes to do that. That would happen maybe two or three times a day; maybe it would not happen at all.

I received instructions from the defendant Mayer regarding the operation of this motor on the trains, and regarding the discharge of coal. During the street-car strike the shovelers, who were supposed to be down there at seven o'clock, did not arrive until eight o'clock. The customs-house weigher came at eight o'clock. We were supposed to be there at seven o'clock, and as soon as we would arrive we would empty the hoppers before the weigher got there. The coal that came out of the hoppers was dumped into the bunkers unweighed. I did not receive any instructions or directions from the defendant Mayer

at any time in reference to the discharge of coal except that time. I have seen cars unloaded before the coal would be brought upon the [932—873] scales. That would be done whenever they got a chance to pull the doors open. The motorman would do that under Eddie Mayer's direction. I never pulled them open myself, but saw other men do it. I did not know of the presence of inspectors upon that dock. Eddie Mayer said when there was nobody around, "Dump the cars if you get a chance." He made that statement only once.

I am familiar with the framework of those bunkers. We were supposed to throw coal that fell upon the top of this framework or upon or near the tracks or crossbeams into the cars, but in fact they shoveled it into the bunkers. I never assisted in doing that myself, but I have seen other men do it. I suppose the planks would be placed underneath the hoppers whenever a steamer came in. Sometimes, however, they would not do that. When the temporary planking was in place sometimes the overflowing coal would fall upon it. As to what became of that coal afterwards, I believe it really would go into the bunkers, but I could not tell. I believe it would go into the bunkers; they would shovel it down there. I have seen that done.

Cross-examination by Mr. STANLEY MOORE.

I am not working now. I have been laid up with rheumatism since last May. I guess it is about two and one-half years since I worked for the Western Fuel Company. Since then I have done very little,

except a little longshoring. I am pretty sure it was 1912 that I last worked for the Fuel Company. I was discharged by Mr. Mayer.

I don't remember any beams down there under the scales-house. I have passed under the scales-house hundreds of times. The scales-house is up above the track, and when the cars come down to be weighed they go down under the scales-house and alongside [933—874] of it. I remember now there is a beam there to hold the scales up. I have seen that beam lots of times. Eddie Mayer has told me and has told the dumper not to load the cars so high as to strike that beam.

(A photograph was here shown the witness in which scales-house appears.)

I see two beams under the scales-house in the photograph. I notice one of the beams is marked as if it had from time to time come in contact with lumps of coal. It is scarred where the coal used to hit it. Eddie Mayer never told me not to overload the cars so as to strike that beam, and he might have told the dumper. I had nothing to do with loading the cars. The motorman was not supposed to load the cars in my time. The other man, who made up the crew of the train, would operate the chutes. The chutes were moved by a lever operated through hydraulic pressure. I heard Eddie Mayer tell the man who operates the chutes once or twice not to overload the cars. Once in awhile you would see a big lump of coal on top of the cars strike the beam in front of the scales-house and fall down on the ground.

I never heard Eddie Mayer say on such occasion that he did not want the cars loaded in that way. I never heard him say that that would break the scales. answer to the question whether I testified on direct examination that if the car was overloaded it was liable to break the scales, I would say I said nothing about breaking the scales down. I never heard anybody say anything about breaking the scales down. I never heard Mr. Mayer or anyone else say that if those cars came on the platform overloaded that the lumps of coal were liable to press and grind against the beam, and the car being on the platform at the same time that it was liable to break the scales. I suppose that if a lump hit the beam it would shake the scales-house, but I do not know. I have seen cars with lumps of coal on them strike that beam. That would not happen but once in a day, or maybe three or four times a day. I did not hear Eddie Mayer say anything about it then. When you [934-875] would get on the scales he would say that the cars were loaded too heavy, and not to load them too heavy. Once in awhile I heard him say that when the cars were overloaded. I do not know the capacity of those scales. I could not tell you whether or not the coal that is loaded on those cars is pretty close to the capacity of the scales.

BE IT REMEMBERED that thereupon the following testimony was given, and that the following proceedings occurred:

Mr. STANLEY MOORE.—Q. Have you ever heard anybody say that if those cars were overloaded

(Testimony of Samuel Griffin.) and they got to grinding against those beams, that it would break those scales?

- A. No, sir, I have not.
- Q. What becomes of the lumps of coal that are knocked off the car when it is loaded up so heavy and so full that lumps come in contact with the scales; is it not a fact that the lumps fall down on the scales?
- A. Yes, sir; sometimes they do and sometimes they do not.
- Q. They fall down on the scales, or very close to the scales, do they not? A. Yes, sir.
- Q. What do you think would happen to those scales if you ran under that weigh-house and onto the scales with your cars piled so high with coal that you collided with those beams?

Mr. ROCHE.—That is objected to as calling for the conclusion of the witness.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

The purpose of the movable planks, concerning which I have testified, was to keep the coal that would fall from the cars from [935—876] going down into the bunkers below. I have testified that every time a ship came in those planks were supposed to be put under the hoppers. The hoppers have to be arranged differently along the track according to the distance between the hatches of the particular ship that is going to be discharged, the ships being of different lengths, and the difference between their hatchways varying. The planking is placed down I suppose to save the coal from going into the bunkers.

I stated that sometimes they forget to put the planking down. In answer to the question whether it is not a fact that the time they do not put the planking down is when those bunkers are already brimming full, right up to the level of the tracks, I would say that I have never seen those bunkers thus filled up. I worked for the Western Fuel Company every time they hired me,—maybe one day a week, maybe two or three times a week. I was not during the same period working for other people. The helpers or dumpers were supposed to put down the temporary planking, I suppose. I think anyone who happened along would do that. The foreman, Joseph Burton, was supposed to move the hoppers. He worked for the Western Fuel Company ever since the Dunsmuirs left, and as long as I was there. After Burton left his stepson succeeded him, and he then had charge of moving the hoppers about. Sometimes I put the planking under the hoppers. It was in general the function of the crew up on top to do that. It would depend upon how big the ship was, and how many hatches she had, whether it would be necessary to change the hoppers about for every vessel. As a matter of fact we had to change them most every time. A lump of coal would get stuck in the chute lots of times,—sometimes once in two days, and sometimes two or three times in one day. Then the coal would fall down on the track and over the third rail. could not help it. [936—877] We would try, however, not to overload the cars, because we did not want that to happen. It was supposed to be an acci-

dent when a lump of coal got down on the track. We always tried not to overload the cars, but sometimes the situation got the best of us. It was supposed to be an accident when that happened. I did not put the lump in the chute so that it would get caught. I have no interest one way or the other in this case. I did not try to overload the cars.

I was first spoken to in regard to giving testimony in this case when I was out in the City and County Hospital by the deputy marshals.

(It was here explained by counsel for the prosecution that the first person who saw him was Mr. Archie Johnson, the Governor's son.)

That was about a month and a half ago. There were three men together. I was served with a subpoena. I have not felt at all kindly toward Eddie Mayer for discharging me. I did no harm. He let me off and put a man in my place. He did not claim that there was good cause for discharging me. He told me to wait until there was more work. I never went back to try to get the job. I never had any trouble with Eddie Mayer in regard to sobriety. I did not have any discussions with him on that subject.

Cross-examination by Mr. McCUTCHEN.

During the last week I have been living at number 18 Ritch Street with a friend. The gentlemen who subpoenaed me never had any conversation with me, except on the subject of the subpoena. I talked to the lawyer about this case and to the Governor's son, who took my testimony out at the hospital. The

three men saw me there together and stayed about ten minutes. [937—878]

I never dumped any coal into the cars when I was running the motor, except once in a while for a little exercise. I could not tell you how many years in the aggregate from the time I began working for the Western Fuel Company until I finally stopped working for the Western Fuel Company I actually did work for that company. I cannot recall at all when it was that I first worked for that company. I do not remember working for them as early as 1905, and I cannot remember whether I worked for them as late as 1912. I am sure, however, that I worked for them in 1910, but I cannot say whether I did after that. It may be as much as three years since I worked for the Western Fuel Company. From the time when I left the Western Fuel Company to the time I went to the hospital I never did a day's work for anybody.

Redirect Examination by Mr. ROCHE.

I remember the fire and earthquake in San Francisco. I was not working then. I worked before that for the Western Fuel Company. I was let out by Eddie Mayer about two or three years ago. Before that I was, of course, working for the Western Fuel Company and also for some other people. After I was let out I did anything that I would come across. I went to the hospital about two or three months ago, suffering from rheumatism and some other kind of sickness. I could not walk at all. For three or four months before I went to the hos-

pital I did no work because of that fact. That is the only reason I did not work. Up to that time I worked for different parties wherever I could obtain a job.

When the hoppers are filled they would sometimes load the cars up and then open the side doors of the cars, so as to let the coal down into the bunkers below. At that time the cars would [938—879] be located beneath the hopper. That was done under Eddie's direction. No part of that coal was weighed.

Recross-examination by Mr. McCUTCHEN.

I know that sometimes there were English ships there discharging Australian coal. The practice that I have told about of the discharge of coal from the hoppers when there were no planks underneath them applied just the same to cargoes of Australian or Japanese coal as to cargoes of other coal.

Further Redirect Examination by Mr. ROCHE.

Mr. Burton worked for about a month or two as foreman after the Dunsmuirs gave up the bunkers to the Western Fuel Company. Then he was succeeded by Mr. Desmond.

[Testimony of W. L. Bunker, for the Government.]

W. L. BUNKER, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live now and have lived for some time in Berkeley. I am not doing anything just now, but I have been employed by the Pacific Mail Steamship

Company from oiler up to chief engineer. I am a machinist or engineer by occupation. I was last in the employ of the Pacific Mail as chief engineer a year ago. I had been chief engineer for about six years prior thereto. The first large boat on which I was chief engineer was the "Manchuria," plying between here and Hongkong. That was voyage eleven. I made about five voyages a year. last voyage was, I think, number thirty-six. When I first took charge of the "Manchuria" she was coaled here by the Western Fuel Company, and that continued [939-880] during all the time that I was acting as chief engineer on that boat. I signed a Pacific Mail form of bill payable to the Western Fuel Company. There were three bunkers on the "Manchuria." One was the after main bunker; the other the fore main bunker, and the third was the reserve bunker. Each bunker was subdivided into decks. They were also subdivided on the decks. The after main and the forward main bunkers were divided into the lower hold, the Orlop deck and the lower 'tween-deck. The deck below, the Orlop deck, was filled with coal like the others. The deck above, the upper 'tween-deck was called the steerage deck. No coal was put there unless sometimes in loading at Japan when we might put a little coal there. It would be through the main deck of the steamer, which is immediately above the upper 'tween-deck, that the bunkers would receive coal. The after main bunker has a capacity of 969 tons; the forward main bunker held the same; the reserve bunkers

held 1150 tons in the hold and 575 on the deck above. That calculation is based upon 43 cubic feet to the ton, as I remember it. It appears upon the blueprint of the ship. Some take it at 42 and some at 43; naturally I took it at 43. The chief engineers on all these liners have a blue-print of the various parts of the ship in which they are interested. I am acquainted with Mr. Chisholm, the marine superintendent of the Pacific Mail Steamship Company. He was marine superintendent when I first became engineer on the "Manchuria." When I thus became engineer on the "Manchuria," we took more coal on at this port than we did subsequently. We took the principal quantity of her coal at Nagasaki, Japan. During the earlier stages of my handling the "Manchuria," a considerable quantity of coal was taken on in San Francisco furnished by the Western Fuel Company. I recall finding a shortage in the coal. There was one occasion when I wrote a letter about it, namely, voyage 18. [940— 8817 I do not remember getting any instructions to put in a report in writing. Naturally I believed there was a shortage on that occasion or I would not have written the letter. I was employed, body and soul, by the Pacific Mail Steamship Company at that time, and the report was made in my capacity as chief engineer on the liner "Manchuria."

Q. Had you upon other occasions made complaints regarding alleged shortages in coal?

A. Well, I don't remember of ever making them officially any more than to always kick for more

coal, sometimes when I was not sure of it, but on general principles. I was working for the Pacific Mail, and if I even had a suspicion that we were short of coal I didn't lose any chance to register a kick about it.

Most of my complaints were made to Powers, who was the weigher for the company. On a few occasions I complained to Chisholm, the marine superintendent. I complained more than once to Eddie Powers. He was the outside man for them and, of course, I used to tell him I thought the weights were not right. I do not remember making a personal complaint to the defendant Mills. I told him several times that I thought his coal was "bum," and that it was short on weight. Mills on such occasions told me that the Government weighed the coal, and what could he do about it. I do not remember his saying anything else on such occasions.

Q. Do you recall at any time having any conversation with the defendant Mills about coal, about coal being sent to your home?

A. Oh, he said, I thought in a joke,—I met him on the dock one day, and Mr. Mills said, "If you would like a ton of coal" or something like that, "I will send it over to the house"; and I said "You had better put it in the ship," and we both laughed and walked [941—882] off.

Q. You told him he had better put the coal in the ship? A. Yes, sir.

Q. Was there any coal ever sent to your house by the Western Fuel Company?

- A. Yes, sir, there was a ton of coal sent there, I presume—my wife told me there was; I didn't see it.
 - Q. Did you receive any bill for the coal?
 - A. There was a receipted bill sent.
 - Q. A receipted bill of what concern?
- A. I never saw the bill; my wife told me about it, but I never looked at it.
 - Q. Do you know where the bill is now?
 - A. She burned it.
- Q. Had you ordered any coal at any time from the Western Fuel Company?

Mr. McCUTCHEN.—One moment now; he did not say that the coal came from the Western Fuel Company.

Mr. ROCHE.—We will prove that it did.

- Q. Did you ever pay for the coal? A. No.
- Q. Did you ever receive any bill at all for the coal excepting this bill to which you have referred?
 - A. No, sir. It did not come to me personally.
- Q. Did you ever order any coal at any time from the Western Fuel Company?
 - A. No, I don't think I ever did.
- Q. And did you ever have, to your recollection, any conversation with the defendant Mills excepting the one regarding supplying you with coal, excepting the one you narrated when he suggested sending some coal out to your house and you told him he better [942—883] had put it on the ship?
- A. Well, I often spoke to Mills about it in a general way, "Give us good coal this time," or "Give us Comax coal" or—

Q. (Intg.) I don't mean that, I mean did you ever have any conversation with the defendant Mills with reference to sending coal out to your home, and when he made that suggestion you told him he had better put it on the ship?

A. No, I never did.

(The attention of the witness was here directed to a letter dated January 29, 1909.)

That is the letter to which I referred, and which was sent to Mr. Chisholm. It was written, I think, before I got to Honolulu.

(Counsel for the prosecution here stated that said letter was already in evidence, but proceeded to read it to the jury as follows:)

"PACIFIC MAIL STEAMSHIP COMPANY.

'Manchuria'

Voy. 18 at Honolulu.

Jan. 29, 1909.

Subject: Shortage of coal received at S. F. voyage 18.

W. Chisholm, Esq.,

Marine Supt. P. M. S. S. Co.

Dear Sir:

Please be advised that in coaling at S. F. we received all coal taken on board in reserve bunker, and drew from main bunkers for port use.

Have weighed samples of the coal supplied in S. F. and find it runs 41 cubic feet per ton (when allowed to partly dry out); by allowing this average we are still 123 tons short. This shortage I have charged to port consumption at S. F. making 309 tons in

place of 186 tons as actually burned.

Respectfully,

W. L. BUNKER,

Chief Engineer.

P. S. Cannot report on quality of coal as we have been using Takasima & Lagawa on passage down.

W. L. BUNKER." [943—884]

I recall writing that letter. Before voyage 18 I had made complaints regarding shortages of coal only in a general way, personal complaints to Powers and to Chisholm, etc. I should say it was several voyages before that I talked to Chisholm. He would talk the matter over with me and wanted to know if I had any suggestion to make where we could do better. Upon all these voyages which I made on the "Manchuria," prior to voyage 18, the coal would be distributed more or less among the three bunkers. I wanted to get it in where it was handiest, so as it would save money for the Pacific Mail Steamship Company, because they were doing their own trimming. On voyage 18 I started to put my coal in the reserve bunker. It was cleaned out before the Western Fuel Company started to coal the vessel. All the coal that was put into the liner on that occasion was placed in that reserve bunker. I started to use that coal after I left Honolulu, as near as I can remember. I did not take any coal out of that bunker for port consumption. I used the aft bunkers for that purpose. I wrote that letter the evening before I reached

Honolulu. The way in which I arrived at the 123 tons shortage on this voyage 18, concerning which I wrote to Mr. Chisholm, was this: I weighed the coal in a tub and got the weight per cubic foot, as near as I could; then I computed the amount in the bunkers at that weight. The lower hold was full of coal as near as I can remember. In answer to the question whether I assumed that the entire bunker was full in making that calculation, I would say that a draughtsman, in designing the bunkers of a ship, takes three inches from the lower lip of the deck beam for the space that the coal will occupy in a ship; that is to say, you do not measure right up to the upper decks. The bunkers ordinarily would not be filled that high. I did not touch the coal in this reserve bunker before I reached Honolulu. [944—885] I simply measured it and weighed it on steel yards that we carried on board. I did not make any further investigation for the purpose of determining whether or not there was a shortage at the time I burned the coal. By trimming the ship I mean the operations by which the men go into the bunkers as the coal is received, and shovel it back and stow it away, so as to avoid spaces and unfilled corners. The men go into a bunker and stow it away as the coal goes through the hold, and then leave one after another until there is one trimmer left, and he has to leave when there is no longer any room for him by reason of the increasing coal. After voyage 18 I did not make any more accurate measurements of my coal for the purpose of finding out whether there

were any shortages. I had the coal distributed through the various bunkers, and therefore it would be impossible to tell to a ton just what was put in the bunkers. I do not remember making any more complaints to Chisholm, except talking in a general way.

Mr. ROCHE.—Q. When did you last have any conversation with Chisholm in which you complained of the shortage of coal?

A. I could not tell you exactly. A few trips after that I spoke to Mr. Chisholm about using the upper decks and the reserve bunker for coal, and that would do away with taking coal here in San Francisco, and he said he would take it up with the office, and after that, shortly afterwards, we did take coal on the upper decks, and after that took very little coal in San Francisco, and the last two trips on the ship, did not take any.

Q. Did Mr. Chisholm say anything to you as to whether or not you should thereafter make any complaints regarding shortages?

A. He told me to not write any more letters of that desecription. [945—886]

After voyage 18 I made arrangements to take on as much coal as I could over in the Orient, and very little coal thereafter was taken on at San Francisco. On the last two voyages I took no coal at San Francisco. By using the decks I could get enough coal aboard, together with what I got at Honolulu, to do the round trip. In getting into the coal that was

loaded in our bunkers by the Western Fuel Company, I would sometimes find spaces where there was no coal. The men in the hold would naturally leave a few little spaces, owing to the almost inaccessible places to get at in stowing. Such spaces are called "holidays."

Cross-examination by Mr. KNIGHT.

We are particularly on the lookout for these holidays when coaling in Japanese ports. There everybody from the chief engineer down gets into overalls and each man has his bunker to watch and it is up to the engineeer to see that they fill those bunkers full. If my memory serves me correctly, we took about 1280 odd tons aboard the "Manchuria" at the completion of voyage 17, and just before the commencement of voyage 18.

(The witness was here permitted to refresh his memory by records and the commander's report, from which it appeared that the number of tons was 1284.)

At the completion of voyage 17 I would say that we had on board in the neighborhood of 2200 tons.

(It was admitted at this point by counsel for the prosecution that the three volumes here produced by counsel for the defendants are the log-books kept by the witness Bunker at the times respectively specified.)

Page 1 of the engineer's log-book for voyage 18 of the "Manchuria" specifies the amount of coal on hand and the amount of coal laden on the steamer at this port. The amount of coal on board at the

termination of voyage 17 was, according to this log, 2287 [946—887] tons, and the amount of coal laden on the steamer at this port prior to the commencement of voyage 18 was the same as I have heretofore given.

(A blue-print of the steamship "Mongolia" was here shown to the witness.)

The "Mongolia" was a sister ship of the "Manchuria," and a blue-print of one would be virtually the same as of the other. The "Mongolia" and the "Manchuria," as originally built, were intended for Atlantic trade.

- Q. And do you recall whether or not prior to the time that they were put on the Pacific trade their bunker capacities were enlarged in order that they might carry more coal?
- A. Yes, sir. They did not enlarge the bunkers, but they used the lower hold and the Orlop deck of the No. 4 hold of the ship under No. 5 hatch.
- Q. That is, the cargo carrying capacity of each steamer was reduced to that extent. A. Yes, sir.
- Q. And that part of the vessel was turned into the coal bunkers? A. Yes, sir.
- Q. Let me show you this blue-print and ask you whether or not you will designate the reserve coal to which you have referred as the place where the coal was laden into the "Manchuria" just before voyage 18. A. Yes, sir, that is it.
- Q. It is marked here with a cross. Take the three spaces just above, is that also a part of the reserve hold of the steamer?

- A. Yes; they use it now and did afterwards, but at that time we used these two decks here (pointing).
- Q. That is, you are now referring to the lowest hold marked [947—888] "Hold No. 4," giving cubical contents of 47,350 feet? A. Yes, sir.
 - Q. And the Orlop 'tween-decks No. 4?
 - A. Yes, sir.
 - Q. Giving the cubical contents of 24,730 feet?
- A. Yes, sir. I want to refresh my memory here as to whether this is 43 cubic feet. This is 43 cubic feet or 42 cubic feet. Do you see it here? I have seen it on some of the drawings, I am almost sure, and I know when I figured the bunkers out, I am almost sure I figured them at 43 in order to get as little coal charged for as possible to fill the bunker.
- Q. In order to make the quantity large for as small a cost as possible? A. Yes, sir.
- Q. Do I understand that subsequent to that time, that is, subsequent to voyage 18 the two upper compartments in the reserve bunker marked "L. T. D." —I presume that means "lower 'tween-decks"?
 - A. Yes, sir.
- Q. (Continuing.) No. 4, with a cubical capacity of 24,730 feet; and also "M. T. D.," which is the main 'tween-decks, I suppose—is that it?
- A. The middle 'tween-decks, or as I called it this morning, the upper 'tween-decks.
- Q. They were not used at that time as portions of the coal bunkers for the "Manchuria"?
- A. You mean that these two upper decks were not used.

- Q. Yes.
- A. No, they had not been used up to that time.
- Q. Those figures are given on the blue-print as to the cargo carrying capacity and coal carrying capacity of the "Mongolia," and I presume the same as to the "Manchuria," and those capacities were figured before each vessel was transformed or changed for this trade on the Pacific Ocean.
 - A. Yes, sir. [948—889]
- Q. So that you would add to the coal carrying capacity of the vessel the amount which I have read here into the record from these four compartments of the reserve bunker? A. Yes, sir.
- Q. Do you recall, Mr. Bunker, whether or not at the time you took the additional coal on, 1284 tons, you completely filled the reserve hold, that is, as much of the reserve hold as was then being used for the purpose of carrying coal? A. Yes, sir.
- Q. And did you have any coal left over after filling that hold?
- A. Yes. I could not tell you the exact figures, but there was quite a lot on the top of the deck that I had the Chinamen when I got to sea level off to 4 feet in height and square it off so that I could measure it off and get the cubical contents of the pile.
- Q. And that is the method by which you estimated the cubical contents of the particular pile of coal?
 - A. Yes, sir.
- Q. And is that the method by which you estimated the entire amount of coal cargo you had taken on board?

- A. That is the only way I could get at it without weighing it off.
- Q. Will you indicate, Mr. Bunker, on this blueprint, where in addition to the two portions of the reserve bunker you put the additional cargo, or rather, the additional coal which you put on at San Francisco?
- A. This is No. 4 hold, holding 1150 tons, at 43 cubic feet—approximately that. That is what we always called it. Above this was the coal that was left here. On the after end there was a little coal left over—
- Q. (Intg.) Will you refer to the holds by their technical names? [949—890]
- A. Yes, I will. Coming in on that trip, as near as I remember, the after main bunkers were full, and I wanted to fill this one; that is, the lower hold, and consequently I worked back on the Orlop deck for a way. There are holds in this bunker right here. Then I started the lower hold so that I could fill this up full. I intended to take somewhere about 1300 tons. I wanted to figure on this bunker because there is less question of doubt as to the capacity of that than there is as to any of the rest. There was coal back here, but I could not tell you how much, but I remember it went clear across the top. There was quite a little pile on the after end of the Orlop deck. Forward here we had a pile that was 4 feet high; but how far it was from the bulkhead I cannot tell you now, but it came out for quite a little distance and I had the Chinaman level it off. That laid on top of the hatch.

Q. That laid just above the lowest hold of the after part of the reserve hold?

A. Yes, sir, that is what I think, it was just a few feet above this lower hold.

Q. Now, Mr. Bunker, in estimating the cubical contents of a ton of coal, do you recall whether or not this particular coal that was put into the "Manchuria" at that time was wet or dry?

A. I could not tell you, I think my report will probably tell you. Medium and dry—that is what I put down as a matter of form all the time anyway.

Q. Your letter will probably refresh your recollection on that point as to the condition in which the coal was at the time it was received. You state you have weighed samples of coal supplied to San Francisco and found it runs 41 cubic feet per ton when allowed to partly dry out. Would that refresh your recollection [950—891] as to the condition of the coal when it was received?

A. I presume it must have been more or less wet in going in.

Q. Do you remember at what time you weighed the samples for the purpose of finding how much it ran to the cubic foot, that is, how many cubis feet to the ton?

A. I think it was the third day out from San Francisco. I remember I had some other things I had to watch pretty closely for a few days, and I think it the the third day out from here I did this weighing down in the bunker.

Q. Do you recall whether or not when you spoke to

Mr. Chisholm about it, he suggested about having a box or some kind of a receptacle made for the purpose of determining the amount of cubic feet to the ton?

A. I don't remember his stating anything like that, but it was unnecessary anyway because there was a tub on board the ship that held exactly 4 cubic feet and I don't see why there would be any object in making any other box or tub or anything else.

Q. And then you would take your steelyard scales and fill your box and then weigh it out?

A. Fill the tub.

Q. Fill the tub and weigh it out; and in that way get the cubical contents of the coal? A. Yes.

Q. And your best recollection is that that occurred when you were about 3 days out? A. Yes, sir.

Q. Do you recall how many different bunkers there were in the "Mongolia" and in the "Manchuria"?

A. How do you mean?

Q. I mean subdivisions of bunkers as compared we will say with the "Korea" or the "Siberia"?

A. I don't know how many bunkers were on the "Korea" or the "Siberia." I always kept on my desk a typewritten copy of [951—892] each bunker and what it held, and each subdivision, but I never tried to memorize them. I suppose I could go along and call each one out.

Q. The bunkers on the "Korea" and the "Siberia" are nearer together,—they are not so much scattered as the bunkers on the "Manchuria," are they? Were not both of those vessels built for this trade?

A. Yes, sir, they were built for this trade, but they also in their forward bunker had a hatch there that could have been converted into a freight hold, if I remember right.

Q. But it would be rather difficult, would it not, Mr. Bunker, unless we adopted some particular method of measuring the coal to determine with any degree of accuracy the amount of coal in the "Manchuria," if she was at all well loaded with coal?

A. Yes, certainly. I only measured this, as I believe I said before, as best I could to be sure of course that the Pacific Mail was not getting the worst of it.

Q. Otherwise you feel it would be impossible to determine with any degree of accuracy how much coal was put on a vessel?

A. Well, I would not like to say I was very close to it; it was the best of my judgment.

Q. Do you recall how many furnaces your steamer had in use at this port, either in unloading or in taking on cargo?

A. I think at that time I was probably using two single end boilers, three furnaces in each boiler, that is, six furnaces altogether; I tested it out on several occasions, I tried to run with the one boiler with forced draught, but I found I would use more coal in using one than two because I had to force the draught so much.

Q. And you used six furnaces?

A. Yes, sir. [952—893]

Q. You have how many furnaces in all on the "Manchuria"? A. 36.

- Q. And you used six out of the 36 here?
- A. Yes, sir.
- Q. Would you recall, independently of some memorandum, how much coal you hoisted in and out of the vessel by your winches at the end of voyage 17 and the commencement of voyage 18?
- A. I could not tell you; in fact, they never gave me a report of the cargo on board the ship. The only thing I went by was the draught. My reports dealt more with the draught and the speed of the ship. I had nothing to do with the cargo.
- Q. The greater the cargo that was hoisted naturally the more coal would be consumed?
 - A. Yes, sir.
- Q. I will show you again the master's report of voyage 17 and 18, and ask you whether or not it would refresh your memory as to the amount of cargo that was delivered by the "Manchuria" at the close of voyage 17 and the amount of cargo which was taken on board at the commencement of voyage 18. To save time, Mr. Roche, I don't suppose there will be any question about these figures.
- Mr. ROCHE.—I should not imagine so, Mr. Knight, but I was going to object to this, however, as to the materiality of it. The testimony of the witness on direct examination related to one bunker, that is, the reserve bunker. The witness testified, as your Honor will recall, that so far as the coal which was burned in burning in the furnaces in port, that it was drawn from one of the other bunkers, and that the reserve bunker was not interfered with, and

that it was a shortage that was charged up against port consumption. [953—894]

(The pending objection having been overruled, the testimony proceeded as follows:)

Mr. KNIGHT.—Q. If you assume, Mr. Bunker, as I think we may, from these reports, that there was approximately a little over 10,000 tons of cargo hoisted in and out of the "Manchuria" at the close of voyage 17 and the commencement of voyage 18, what would you say would be the normal port consumption of coal to accomplish that work?

A. Well, I would say somewhere about 15 tons, would be a reasonable figure. You see in way ports, with the steam on all the boilers, and your dynamos running full so as to keep lights for the passengers in the various rooms, and your refrigerating plant, which is a very large one—a 45-tons plant—and it eats up a lot of coal and also your feed-pumps running, and so on, your coal consumption goes up sometimes to 45 tons a day. But lying here in San Francisco, with no passengers on board and no lights going, or anything like that, and the feed-pumps, running the two single end boilers, it would not take so much, and I would judge that 15 tons would be about the average, I believe I have the exact record. I experimented with that several times and have the exact figures, but I left them with the succeeding engineer.

Q. Well, you would say that to accomplish that work under the circumstances, the vessel lying at San Francisco, and with no passengers on board,

that it would be about 15 tons a day, so that for 10 days it would approximate 150 tons?

- A. Some place around there. I could not tell exactly. 10,000 tons I should think would be a rather small amount because we have often brought from the Orient as much as 1500 tons over here and then taken quite a cargo back. You see you hoist the cargo in and then take it out again. [954—395]
- Q. The captain's report, I will say for your information, Mr. Bunker, shows 10,400 or 10,500 tons of cargo delivered here at the end of voyage 17, or laden on the vessel at the commencement of voyage 18?
- A. I would like you to let me see that report again, please. I don't think you will find anything in that as to the cargo on voyage 18. If I remember right, Captain Saunders left the ship at the end of voyage 17 and Captain Freel took it on voyage 18.
- Q. I think that is correct. I show you voyage 17 now. Will you read from that the amount of cargo which the "Manchuria" brought into San Francisco at the end of that voyage? I think you will find it in the last line of the column headed "Cargo, San Francisco, discharged"? A. 10,839.
 - Q. No, that is the total cargo carried between ports.
- A. Excuse me, but wouldn't it be better to go by the draught of the ship? For instance, she holds 4,000 tons of water ballast, and if she pumps that water ballast in, it takes so much more to give a draught here.
 - Q. Do you know whether any water ballast was

(Testimony of W. L. Bunker.) pumped in or out of the vessel?

- A. I could not tell you that.
- Q. Well, just take her cargo discharge. You will find here, at the expiration of voyage 17, that the cargo discharged at San Francisco appears to be 8621 tons. This is cargo discharged at other ports, at Honolulu, Yokohama, Kobe, Nagasaki, and so on.
 - A. Yes, sir.
- Q. And the amount of cargo laden on board the "Manchuria" at the commencement of voyage 18, so you will notice here, was 1539 tons?
 - A. Yes, sir. [955—896]
- Q. That makes approximately a trifle over 10,000 tons? A. Yes, sir.
- Q. Do you think you would not consume here in this port for doing the work that has been described for say the ten days you were lying here not to exceed 150 tons of coal?
- A. I think that would be about right; I believe I have charged 180 tons. I would like to take a contract on doing it for 180 tons.
- Q. And included in that was the coal required for starting your other 30 furnaces?
- A. Is it not 25 tons for starting fires? What does it say here? Starting fires 25 tons.
- Q. Is it not the fact that the complaint or suggestions which you had to make concerning the coal here bore more on the quality of the coal than the quantity of the coal?
 - A. Well, I suppose of the two the quality had more

to do with it or as much to do with it as the quantity, or more so, but I could not kick about the quality but I could kick about the quantity.

- Q. You knew that the Western Fuel Company was giving you whatever quality coal it had, and yet it was not satisfactory to you as a matter of fact, was it? A. That is the idea.
- Q. You felt you were not getting the proper amount of heat units out of it that you could get out of other coal; was not that the fact?
 - A. Yes, sir.
- Q. And naturally it was not as satisfactory to you for that reason as an engineer, was it?
- A. I would not say it was entirely due to the quality here. The quality had a good deal to do with it, but I also felt that [956—897] it was more or less short on the quantity and I made sure to report it.
- Q. And so you made this written report that has been put in evidence here? A. Yes, sir.
- Q. It is not an unusual thing, is it, Mr. Bunker, for engineers who have at heart the welfare of their employer, to register a protest against the quantity of coal that steamers have received all over the world at every coaling port?
- A. Well, I expect I would do it if I thought I could get more coal by it.
- Q. And that is so virtually at any port at which any of your vessels coaled?
- A. I don't know what the other engineers do, Mr. Knight; I know what I did.

As I testified on direct examination, I finally came

to use almost entirely Japanese coal. One afternoon I tested a sample of the San Francisco coal. I could get more heat units out of it than I did out of the Western Fuel Company's coal. It was a better quality. I don't remember that the coal that I got from the Western Fuel Company at that time was given me while the strike was going on. The matter of the heat units was not the only reason why I preferred the Japanese coal—they gave us better measurements over there as well as better quality. I never paid any attention as to how they measured their coal, whether it was by draught of the barges or not. I measured the bunkers, and saw they filled them up. They had to take my figures, because I signed the bill before they could get their money. In answer to the question whether I had occasion to insist upon additional weights there frequently, I would say I never gave the Mail Company any the worst of it. [957-898] The coal of the Western Fuel Company made more clinkers than the Japanese coal, as the result of burning; but then, the reason I think why so many engineers got clinkers is that they did not burn their fires right. It is better to carry a light fire. I never paid so much attention to the coal of the Western Fuel Company on account of clinkers.

(A blue-print, concerning which the witness Bunker testified, was here introduced in evidence as Defendant's Exhibit "J." The log-books referred to were not introduced in evidence, but counsel for the prosecution consented that they might be used fur-

ther if counsel for the defendants should so desire, without proving any foundation.)

[Testimony of Robert Sass, for the Government.]

ROBERT SASS, a witness called for the United States, and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live now and have lived for 22 years in San Francisco. I am now assistant engineer down at the Vermont Marble Works. I worked for John Rosenfeld & Company and for their successor, the Western Fuel Company, during the period from 1901 to 1904. I was in this period taking care of the barges "Corsair" and "Theobold," until the former sank. The Mission Street bunkers were in charge of John Rosenfeld & Company at that time—Mission number 2. I was taking care of the barges for the Western Fuel Company as for the Rosenfelds. After the "Corsair" sank I continued on the "Theobold." My duties were to haul the barge about and to see that she was loaded right, when they [958—899] dumping coal into her down at the bunkers. always loaded at Mission Street. The coal would checked in from the hoppers at the end of the bunkers shot into the barges.

The coal would be discharged from the barge into different ships belonging to the Pacific Mail Steamship Company and other vessels. After taking care of the barges for about two years I worked along the city front as longshoreman, and then afterwards I was again employed by the Western Fuel Company shovelling and trimming coal. The date of my re-

turn to the Western Fuel Company was about 1909. I was hoisting coal for them then, too, on the barges "Ruth," "Nanaimo," "Theobald" and "Comanche." I was the engineer on the barge. We got the fuel for the engines out of the barge itself, using our coal from the stock that had been taken from the bunkers. I never especially weighed any of that coal. I suppose we would use a couple of tubs of coal for 24 hours for our fuel purposes on the barge. It would depend on the size of the barge. We did not burn any coal when we were moored in the stream or in the dock. I used to bank my fires at night; it would only take a couple of shovels of coal to do that. When the barges were not being used at all for several days, I would not keep up my fires. On the occasion of my second employment with the Western Fuel Company, I worked from 1909 until the middle of 1910. I think I worked for about a year. I did no other service except hoisting coal. except that once for a few weeks I tended hatch in another man's place. I do not remember the time. While I was thus tending hatch I observed the men working in the hold of a barge. It was in the beginning of 1904 that I ceased my first employment with the Western Fuel Company.

I think in 1908 I started to work again shovelling coal and trimming for the Western Fuel Company, but I did that work [959—900] only off and on, until 1909; then I worked, as I have said, continuously for about a year. When I was trimming from 1908 to 1909, I did not visit the barges. When I

worked for the Fuel Company prior to 1904 I observed the day the buckets were being filled from time to time on the barges when coal was being discharged from barges into liners. The tubs that were weighed were always loaded up, filled up, and those that were not weighed were very slight, the majority of them. The coal placed in the tubs that were weighed, as compared with those that were not weighed, was almost always fine or slack coal, with no lumps in it. The fine coal is heavier than the lump coal. When I was an engineer hoisting on the barges from 1909 to 1910, I again observed the same thing in respect to the tubs.

Sometimes I worked at night on the barges. I could not see the quantity of coal in the tubs, however, very well from my station in the engine-room. Regarding the lights, I would say that I have seen times when they would have to have two clusters of electric lights from off the steamer, and a couple of The Western Fuel Company furnished the latter, while the electric lights came from the steamer. A man would have to stand right over the hatch at night in order to see the coal contained in . the tubs. Weights would be taken about every hour at night, so far as I could guess, and that would continue all night long. When weights would not be taken the weighers would sometimes walk up and down the deck, and sometimes come into the engineroom to warm themselves. I was in the engineroom myself. At other times, the weigher would sit around the hatch watching. He would not sit

in the engine-room very long, perhaps five or ten or fifteen minutes at a spell. You could only see a part of the deck of the barge [960—901] from where I was operating my engine, because it was so dark.

Sometimes the tubs that were not weighed would contain as much coal as when weighed on the barges, but not very often. During the three weeks I tended hatch the men shovelling coal were practically within my observation all the time. When a weight was to be taken, the hatch-tender would call out "On the scales," and then two men would come up out of the hold to help put the tub on the scales. About 15 minutes would be occupied to take the weight of four tubs. After the Western Fuel Company took over the Mission Street dock I used to be there day and night on the barge, because I slept on the barge. At about five o'clock, when the day's work was over, I would wash and then go over and get my supper, and then come back and sleep on the barge. I was at that time familiar with the towers located over the bunkers, and with the manner of discharging coal from the hoppers into the cars below by means of chutes. When they were discharging a ship they would ordinarily quit work in the afternoon about five o'clock. I am, of course, speaking of the time before I left the employ of the Western Fuel Company. I never noticed what time in the afternoon the Government weigher left the dock. Eddie Mayer was foreman for the Western Fuel Company on the dock. I was at the same time barge tender. Twice I saw coal running out of the hopper into the

bunkers after five o'clock. The work was all stopped and I was making the barge fast, tying her up for the night, and I heard the noise. It was the coal running that attracted my attention, and I looked up to the bunker and saw the coal running out of the hopper into the bunker. It was coming right out of the hopper into the bunker. I did not see anybody there at the time. I do not know who opened up the chute. I saw [961—902] one hopper emptied in that way on one night, and the other hopper emptied on the next night. It was so long ago that I cannot fix the dates when that took place.

Cross-examination by Mr. STANLEY MOORE.

I first commenced to work along the waterfront for John Rosenfeld on a barge. I have also worked both for the Western Fuel Company and for Woodside & Company in the period from 1901 to 1910. The last-named company were longshoremen. I also did some trimming of coal, for which I used to be paid sometimes by Powers and sometimes by Mr. Mills. I do not know which of them I was working for.

I know Mr. Powers very well, and am living in one of his houses, and have lived there for five years. I have known the Powers family since they were children. I suppose, when I was trimming, I used to work for Mr. Powers and Mr. Mills, because they paid me. I was paid by the month steady for taking care of the barges from 1901 to 1904.

Ever since I can remember the buckets were full when they were weighed, and light when they were

not weighed. Sometimes weights were taken oftener than at other times. They took weights about once every hour at night, as I have testified on direct examination. So far as I know, it was just about the same in the daytime. They would take about eight or ten weights a day. Generally, they would weigh four buckets at a time. That is called a round of weights. I have seen lump coal in those buckets that would be weighed, but the majority of the coal was fine coal when weights were taken. In other words, when they would weigh the tubs they would generally put in fine coal, and when they would not weigh the tubs, they [962—903] generally put in fine and lumps mixed. I used to be at the Mission Street bunkers for three and a half years, or close on to four years. I would not be there every day; I would simply go down to the barge to load up. Sometimes when the barge was not working, she would be lying alongside those bunkers, or over at the Pacific Mail dock, most of the time at the former place. I was always on the barge, and slept there. When the barge went from the Mail Dock over to the bunkers to get coal I would go with her and stay with her while she was loading; so that, in those four years I . was in the neighborhood of the bunkers a great many times. On the two occasions, when I saw coal running out of the hopper, I do not know whether the hopper was full or not. I do not know whether sometimes, when a vessel has been coaled, they have to clean out the hoppers. I do not know whether the coal that I saw or heard running out was foreign

(Testimony of John W. Smith.)

to four in the afternoon, and from about seven in the evening until five the next morning, with the exception of a short time off. The "Korea" was at that time taking on coal. She was being coaled by the Western Fuel Company from the barge "Wellington" on the inshore side. This last statement is in reference to the night-time. In the afternoon I think she was being coaled by the barge "Theobold" on the offshore side. I am not absolutely sure, but I think Mr. Dave Powers was with me on the afternoon trip. He was in the employ of the Government at the time as a customs agent. The situation that I observed during the afternoon in connection with the coaling of the "Korea" was exactly what I had observed previously on December 16th and 17th. I was down there then too for the purpose of observing the coaling of the "Korea." On those occasions I was accompanied by Mr. Powers. We went in the daytime only on the 16th and 17th. On the 16th we were there from about 1:30 to 5, and on the 17th from 11 A. M. until 5 P. M. On the 16th the "Korea" was being coaled from the "Theobold," as also on the 17th. Upon these three dates, the 16th, 17th and 18th, during our observations in the daytime, I stationed myself at different places on the steamer "Korea," where I could best see the coaling. I do not think I went down upon the barge. I was at one time across at the other dock, on another ship, I believe, but for a short time only. I do not recall which particular day that was. I located myself on the upper part of the steamer; part of the time on the

(Testimony of John W. Smith.)

bridge, and part of the time on the upper deck. On the first date I counted the tubs to see how many they were weighing, [878—819] the average they were taking—and they were running 56 tubs, and then weighing the next four. That was on the first date. I do not remember the name of the weigher. On the second day I did not count the tubs. The same weigher was present, I think, but I am not certain. I did not notice the number of weights that they were taking on the third day, that is, on the 18th. tubs that were not weighed were lighter than those that were weighed. I was on the bridge part of the time, and on different places on the deck, not very far from where they were running the coal into the ship. I am not certain whether they were putting coal into the same hole during the three days. I could tell by the position occupied by me when weights would be taken. I did not make any memorandum of the rapidity with which the tubs were being hoisted. Mr. Enlow, I think, was with me, as well as Mr. Powers, during a part of the daytime, but I could not say on which day. The tubs which were weighed were in every case heaping full, well rounded out, and the tubs which were not weighed were hardly ever rounded out. To my recollection none of them were as full as the ones that were weighed. In the case of the tubs that were not weighed, the coal would sometimes be below the top of the tub. It would quite often be that way. To my recollection, though, I could not say positively none of the tubs that were not weighed were rounded

Redirect Examination by Mr. ROCHE.

I appeared before the Grand Jury under a subpoena served upon me by Mr. McNab, who, as United States attorney, thoroughly examined me before the Grand Jury on the matters to which I have testified here to-day.

I have never paid any social visit to David or Edward Powers, and they never paid any to me except that we would occasionally meet on the street. On such occasions we would talk only a short while. I am a great deal older than the Powers boys.

I could not see the buckets come up from the hold of the barge until they got above the pile of coal on the deck, which would sometimes be seven or eight feet high. I stood on a level with the deck: but there are two barges, the "Wellington" and the "Melrose," where the engineer stands six or seven feet higher than the deck. The first coal that is hoisted from the barge is from the deck. It is the duty of the engineer as the tubs come up to watch for the signal of the hatch-tender if a weight is to be taken, and also to watch the tub as it ascends so as to slacken the pace as the tub gets nearer the tripping point. There is a lantern and sometimes an electric cluster up above the point where the tub trips that used to shine the light so that the flash of it would run [965-906] on the trolley beam up there and on the bucket as it got within the range of the light. When the custom-house weighers ordered the men to brush off some of the coal from the tubs before they would allow them to be weighed, the tubs were filled up above their sides.

Recross-examination by Mr. STANLEY MOORE.

I knew that David Powers was working for the Government, but I did not know what he was doing. I saw in the paper that he was a witness in this case.

Recross-examination by Mr. McCUTCHEN.

When I was hoisting coal from the barges, one end of my cable was attached to the tub, and the other end to the drum of the windlass. There was no indicator on the cable to show me how high the tub was, and I could not follow the course of the tub by the number of laps of the cable, because the movement was too rapid; but in any case I was watching the tub and not the drum.

[Testimony of Philip Ganesi, for the Government.] PHILIP GANESI, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now live and have lived for about ten years in San Francisco. I now work and have been working since I have been subpoenaed out at the cement works. I went to work for the Western Fuel Company in 1905, and continued working for them up to 1909, and then I went away for about 18 months, and came back in 1911. I worked pretty continuously for the Western Fuel [966—907] Company during that first period of employment. I was paid by the hour. Sometimes I would work 15 and sometimes 12 days in a month. After I came back to the Western Fuel Company in 1911, I worked there

then on until February, 1913. It was in April, 1911, that I came back. During the four years from 1905 to 1909, I was working on the barge filling up the tubs. I was a shoveller. During the period of my employment following 1911, I worked on the barges shovelling, and helping to discharge cargoes for the Western Fuel Company on vessels bringing coal to San Francisco. I think in the latter case the coal was weighed on the bunkers. I also during my first period of employment worked on ships where the coal was weighed out on the scales on the ship. When coal was thus weighed out on the ship, men would have to come up out of the hold of the ship to land the tub. Pallas was one of the hatch-tenders when I worked on the barges; also there was a man named Rooker. The former is not, the latter is, still employed by the Western Fuel Company.

I knew the defendant Edward J. Smith, and have known him for two years. I saw him almost every time I was working during my last two years of employment. He was keeping the weights in a book. During the four years that I worked shovelling coal on the barges weights would be taken every hour, and sometimes every two or three hours. When a weight was to be taken the hatch-tender would call out; then shovellers would come up from the hold and help land the tub. During those four years of my employment, they would always, when weights would be taken, put fine coal in the tubs. It weighs more. The tubs would be often all full of fine coal, the heaviest coal you can find on the barge. So far

as the tubs that were not weighed were concerned, they would put in anything that would go, awfully fine or anything. The hatch-tender, about five [967—908] minutes before a weight was to be taken, would holler, and then we would be keeping watch when the custom-house man came, and we would fill the tub. One time the hatch-tender told me that my tub was pretty light when a weight was to be taken, that there was not enough fine coal put in the tubs and not enough coal put in and he said to me, "Why don't you fill them up like the rest?" Four tubs are ordinarily weighed, one at a time, and my tub was the lightest of the four. It was all full of rough coal, rock, and he told me if I did that again he would fire me. The hatch-tender would be all the time telling the men to put more coal in the tubs that would be weighed, or to fill them with fine coal. During these four years, also, I sometimes worked in the hold of a ship that was discharging imported coal, and upon those occasions the coal would sometimes be weighed upon the decks of the ship. They would tell me then, "Don't you fill too much when they are going on the scales, otherwise the Western Fuel people will get mad if you fill them up too much." That was in connection with the imported coal. During my last period of employment, from 1911 to 1913, Mr. Rooker was hatchtender. Rooker said every time, "You fill them up pretty good when they are going on the scales, and when they are not going on the scale he don't care"; and the men did fill the tubs well when they were

being weighed. The tubs that were being weighed contained more coal than those that were not weighed. I often worked at night. Weights would be taken about once in two hours. I have met Mr. Rooker, the hatch-tender, within the last four or five months, after I was subpoenaed in this case. I testified before the Grand Jury.

- Q. I want you to go on and state what took place in the office of Mr. Mills, and in the presence of Mr. Mills, after you [968—909] had testified before the Grand Jury.
- A. Mr. Mills, he asked me, he said, "You're Mr. Ganesi"; I said "Yes." He said, "You were before the Grand Jury?" I said, "Yes." He said, "Did you get paid for it?" I said, "Yes, I got \$3.00 for the day I was on." Then he asked me, he said, "You go to work to-morrow morning." First he telephoned up-town to somebody, and said, "I have got some more witnesses"; and then he said, "You wait until to morrow morning; he said, "You go to work to-morrow morning, there is a couple of hours' work there, and after you get through the work you come up to my office;" and I said, "All right"; but the next morning I didn't show up.
 - Q. You did not go to work A. No.
- Q. Do you remember anything further that took place at that time? Do you remember anything more that was said by the defendant Mills to you?
- A. Yes, sir; he was going to ask me all the questions about the Grand Jury.
 - Q. When you were brought before the Grand Jury

by Mr. McNab, who was then the United States District Attorney, by whom were you employed at that time?

- A. I was employed by the Western Fuel.
- Q. You were then working for the Western Fuel?
- A. Yes, sir.
- Q. But you say you did not go back there after this conversation? A. No, I did not. [969—910]

Cross-examination by Mr. STANLEY MOORE.

I know David and Edward Powers, and have known them for ten years last past. I have never talked with either of them about the Western Fuel case, although I have been waiting to be called as a witness with David Powers for several days. When I first knew the Powers boys I was working on a barge at an old dock. Sometimes I would do trimming for Powers, and be paid by the Western Fuel In fact I worked for Powers in trimming Company. before I was employed with the Western Fuel Com-I do not think I worked for Powers in the trimming since the fire, but I did before the fire. The last time I worked for the Western Fuel Company was February, 1913. Dave Powers used to go down to the dock many times, but he only walked home with me once. We never talked about the business of the Western Fuel Company. He was never a hatch-tender over me. When I was working there from 1905 to 1909 on the barge, Dave Powers was a timekeeper, or something like that. There were two steady gangs in 1909 and at that time the hatchtenders were Pallas and Wilson. I went back to the

Western Fuel Company in April, 1911, and at that time Dave Powers was a hatch-tender, and that was the first time I ever saw him in that capacity. I was under him only a few days. I worked two or three days as a member of the gang in the hold of the barges, and then quit because I got sick. I cannot say at all how many buckets went up per hour; they range from 50 to 63 tons, but I don't know how many buckets that would be. Sometimes they go up fast, and sometimes slow. They go slow when the hold of the vessel is pretty nearly finished. They take weights with the same frequency when the buckets go slow as when they go fast. It is the same all the time, about once in an hour, or an hour and a half. When the buckets are going up slowly, they don't go up more than 20 or 25 an hour. They are supposed to take [970—911] weights every hour whether the buckets are going up fast or slow. It is not a fact that they are supposed to weigh so many buckets out of say 60. It is the time, not the number of buckets that go up, that determines when the weights are to be taken. I never heard that they were to weigh four out of 60 tubs. They weigh simply when the custom-house weigher tells them to. Then they weigh four tubs generally, one after another. I am paid 55 cents an hour, receiving five dollars for a nine-hour day. At night we get a dollar an hour. I worked a few months for a hatch-tender named Wilson. I worked three or four times on ships that were bringing in imported coal for the Western Fuel Company in San Francisco. I cannot remember when

it was. I worked once on the "Titania." That was in 1909. That ship was not weighed out over the sides. The coal was not weighed in tubs, but was put into the Folsom Street bunkers. As long as I was with the Western Fuel Company I was mostly working on the barges. I cannot remember the name of any ships that I worked on where the coal was discharged over the side. When I was working on the barges I was on a steady gang, and there were two such gangs. I worked on any and all the barges. Some of the barges worked faster than others.

- Q. Now, you say that when a weight was to be taken, fine coal was put into the bucket? A. Yes.
- Q. What kind of coal do you claim was put in the bucket when a weight was not to be taken?
- A. Anything, rock, full or not full, meeting the hook, and turning her loose, and letting her go.
- Q. You would meet the hook, turn her loose, and let her go? A. Yes. [971—912]
- Q. When the weight was to be taken, you would put in fine coal, would you?
 - A. Yes, and give plenty of chance to fill them up.
 - Q. You had plenty of chance to fill them up, too? A. Yes.
- Q. That was because the four buckets were to be weighed in succession, was it? A. Yes.
- Q. And you had more time then to put in the coal in the buckets than you did when they were going up at other times? A. Yes.
- Q. And so, when you had plenty of time to fill the buckets, you used to put in all fine coal, did you?

- A. Yes, the heaviest there was on the barge.
- Q. When you were having to meet the hook, would you put in whatever kind of coal that was handiest for you to get in the bucket?
 - A. Yes, to get in the tub.
 - Q. What kind of coal weighs heaviest of all?
- A. There is lots of difference in the weight. When it is fine and all the tub is good and full, and solid; if the coal is rocky, you can take three big lumps and put it in one after the other, and the tub is full.
 - Q. The fine coal weighs the heaviset of all, does it?
 - A. Yes.
- Q. Does the fine coal weigh heavier than lump coal and fine coal, both? A. On a tub, yes.
- Q. The fine coal weighs more than any other kind of coal that you can put in there, or mix in there, does it? A. Yes.
- Q. How much time did you have to fill the buckets when the weights were not to be taken? [972—913]
- A. When a weight was taken, that was solid, one was filled, and when that was going on the scale, we would fill the other one.
- Q. About how much time did you have to fill the buckets when the weight was not to be taken?
 - A. It would take about a minute to fill one.
 - Q. It took about a minute to fill the bucket?
 - A. Yes.
- Q. And when you first go to fill the bucket, do you generally shovel all the coal, or do you dump the bucket over and scoop it into the bucket?
 - A. Sometimes we scoop it in and sometimes we

(Testimony of Philip Ganesi.) have to shovel it.

Q. About half the time you scoop it in and then shovel it, and half the time you have to shovel it all, do you? A. Yes.

I first saw Mr. Ed Smith working down there for the company in 1911. I did not see him there when I was there in 1909. I did not work on the barges as often at night as I did in the daytime. The Pacific Mail Company used to be represented at the weighing by an old man. The custom-house weigher would, of course, also be present, and Mr. Ed Smith would be there. I never saw a custom-house guard sitting around on the barge watching to see if smuggling was going on.

Since leaving the Western Fuel Company I have worked in the cement business for an Italian whose name I don't know. He is a little contractor.

I said on direct examination that I began working in the cement in February, but now I say it was the summer, because I was unemployed for four or five months after I quit the Western Fuel Company. The last time I quit the cement was I think in September or October. [973—914]

Cross-examination by Mr. McCUTCHEN.

When David Powers walked home with me from the waterfront I did not know what his business was, nor did he tell me, nor did he tell me whether he was employed, or what he had come to see me for. He walked all the way home with me, but made no statement to me. He was just talking and fooling around. He did not actually come as far as my home with me,

but branched off at Second Street. Another day he went with me to the postoffice. I went in and went upstairs with him. He did not tell me what he wanted me to go to the postoffice for. When I got there I saw Mr. Tidwell and two or three men. We went up on the second floor to a room the number of which I forget.

- Q. When Dave Powers asked you to come to the postoffice building, what did he say he wanted you to come for?
- A. We went in, and he told me, he says, "That man is going to see you." "All right," I says; I went.
 - Q. He said that man wanted to see you?
 - A. Yes.
- Q. In answer to a question put to you by Mr. Moore on cross-examination, you said Dave Powers had never talked with you about this matter at all, didn't you?
- A. No, I never talked with him down on the front, no place, about the Western Fuel Company.
- Q. When he told you that the man upstairs wanted to see you, what did he say he wanted to see you about? A. Well, just talk like we talk there.
- Q. Just as you had been talking to Dave Powers before, was it? A. Yes.
- Q. Then you had been talking to Dave Powers before about this case, had you? A. No. [974—915]
- Q. What do you mean by saying that the man wanted to talk to you just as you had talked to Dave Powers before?

- A. We were talking like before, but I never knew about a combination, the trial of this Western Fuel.
- Q. You knew at the time, didn't you, when Dave Powers met you on the waterfront, that he was employed by the Government? A. I never knew.
 - Q. You didn't know that? A. No.
 - Q. You never have heard that?
 - A. No, I heard it after.
- Q. You heard it after, but up to the time that he brought you out to the postoffice building, you never had heard that he was employed by the Government?
 - A. No.
- Q. Did you think it strange that he should ask you to come out to the postoffice building, without telling you for what purpose he wanted you to come?
- A. No, he says he wanted me to go up and see a friend in the postoffice.
- Q. He wanted you to go out and see a friend at the postoffice building, did he? A. He did.
 - Q. Did he tell you who the friend was?
 - A. Yes, he told me.
 - Q. He told you? A. Yes.
 - Q. Who did he tell you it was?
 - A. It was Mr. Tidwell and a man they call McNab.
- Q. Tidwell and McNab; did he tell you that Tidwell and McNab [975—916] were friends of his?
 - A. Yes.
 - Q. Did you ask him who Tidwell and McNab were?
 - A. Yes.
 - Q. Did he tell you who they were? A. Yes.

- Q. This all took place down on the waterfront, did it? A. Down in the postoffice.
- Q. At the postoffice, but before he brought you to the postoffice, he told you he wanted you to come and see two friends of his? A. Yes.
- Q. He told you that down on the waterfront, didn't he? A. Yes.
- Q. Did you ask him why he wanted you to come and see those two friends of his?
 - A. Yes, I asked him, "What you want me for?"
 - Q. What did he say?
- A. He said, "Come down; don't get scared; they won't hurt you."
 - Q. What did he say that he wanted you for?
- A. He never say what he wanted to take me for. I went down and went up and saw these two people, and they asked me about the place I was working, and I told them straight, the truth.
- Q. I am talking about your interview with Dave Powers. Was it before you left the waterfront that he told you that he wanted you to come and see two friends of his?

 A. Yes.

I cannot remember how many times I saw Dave Powers on the waterfront before he asked me to go to the postoffice, but I had not seen him for a long time before that. He did not say a word to me about this case. [976—917]

Redirect Examination by Mr. ROCHE.

I left the employ of the Western Fuel Company in February, and then I was sick for several months, and I went to work for the cement company on the

26th of June. I was working in the cement when Rooker came up and asked me to go to the office of the defendant Mills. Upon the occasion when I came to the postoffice building at the request of and with David Powers, I made a statement to Mr. Tidwell and Mr. McNab concerning what I knew about the facts and circumstances to which I have here testified.

Recross-examination by Mr. MOORE.

It is not a fact that I went back and told Mr. Rooker, of the Western Fuel Company, that I was sick after Mr. Powers had seen me on a number of occasions down on the waterfront and talked with me and brought me to the postoffice building. The sickness occurred after the happening of that event. I will not testify positively that I have not had any talk with the Powers boys about my expenses or a reward while I was out of work. They have not paid anything for me.

Redirect Examination by Mr. ROCHE.

The last time that I worked at all was in the cement works, and that was about two months ago.

[Testimony of Jim Balestra, for the Government.]

JIM BALESTRA, a witness called for the United States, and sworn, testified as follows: [977—918]

Direct Examination by Mr. ROCHE.

I live now and have lived in San Francisco ever since I was subpoenaed in this case. I am at present employed by the D. O. Mills Estate in Millbrae, where I have been working for about nine months as land-

scape gardener. I was first employed by the Western Fuel Company in 1911 some time, in either April or May. Before that I had been an engineer. I continued to work for the Western Fuel Company up to about July, 1912. I shoveled coal down on the barges. I was employed on all the barges in this capacity. The first hatch-tender I worked for was Mr. Dave Powers, and the next Dan Pallas. I also worked in the Wilson gang, and also under Rooker. Once in a while I would work in the hold of a vessel which was discharging imported coal over sides. I should say that I have thus worked on ships three or four times. Dave Powers continued to work as hatch-tender only a short time after I began working for the Western Fuel Company. Most of my work. was under Rooker. Sometimes I worked overtime at night. We used to get a rush that required this night work about every other month. I did most of my work, though, of course, in the day time. While I was thus working as a shoveler on the barges I was familiar with the manner coal was hoisted from the hold of a barge and dumped into the ships or liners. The frequency with which weights would be taken by the custom-house weighers varied. I would say that normally it would be about two or three weights a day. At night we generally took one weight just after we started to work, and another one before we got through in the morning. When I worked in the day time I commenced at seven o'clock, and worked until twelve o'clock, and then started at one and worked until five. When I was on overtime I some-

times worked all night. As to the method in [978—919] which we shovelers in the holds of the barges handled the tubs which were weighed and which were not weighed, I would say: When it was time for the United States Government to take the weights we would go to work and put on as much coal as we could possibly put on all of the tubs; and when we did not have to take the weights we would put it on "any old way," we would always leave the tubs not quite full. I never got any direct order to overload tubs from anybody, with the exception of one hatch-tender by the name of Rooker, who would give us a wink at the time when it was time for the custom officer to take a weight, and we knew the balance. Most of the time the custom-house officers used to complain that the tubs were overloaded when weights were to be taken. Some of them, however, did not complain. When a custom-house officer would complain, we, as a rule, would have to take some of the coal off the tub. The way in which we knew that a weight was to be taken was,—the weigher would be standing on one end of the barge, and the hatch would be in the center of the barge, so that when the hatch-tender saw the officer coming he would give us the wink. He did not know positively that a weight would be taken, but he would give us the wink anyway. Sometimes he would say, "They are going to take a weight." On the "Theobold," the "Melrose" and the "Wellington" the hatchtender always called up a couple of men to help swing the tub over on the scales. When weights were to be

taken we, of course, put fine coal into the tubs if we had any show at all. The reason we did that was because it weighed more. In answer to the question whether anything was said by the hatch-tender or by anybody else upon the subject of putting more coal into the tubs and of putting fine coal into the tubs when weights were to be taken if we had a chance to do that, I would repeat what I have [979—920] already said, that we would get a wink from the hatch-tender that they were going to take a weight, and that we knew the balance. There are two ropes or tails upon each tub, located one on each side. On the "Nanaimo" and the "Comanche" we had scales which hung on a beam, called hanging scales. The tub would be placed upon a hook attached to a beam rod, and the coal thus weighed. At such time the tub would be located right in the hatch, below the deck perhaps ten feet. The custom-house weigher would be up on the deck. The part of the scales indicating the weight would be above the deck. On such occasions we would often step on the rope or tails of the tub if we had a chance to do so, and thereby press on the scales, and consequently make the scales register more weight than they should. We could not do that very often if the custom-house officer were on the lookout, but we did it whenever we had a show.

When I was working in the holds of ships discharging imported coal oversides, when they were taking weights on the ships we would generally load the tubs a little lower; otherwise, we would load them up properly. In other words, there would be

more coal in the tubs when they were not weighed than when they were weighed.

Cross-examination by Mr. McCUTCHEN.

I first spoke to the Powers brothers about this case after I was subpoenaed. I was first supboenaed as a witness in this case on the 10th of December, 1913. I don't remember that I had ever seen the Powers boys, or either of them, about this case prior to the 10th of December. Neither of them saw me at the D. O. Mills Estate. I saw them, however, in San Francisco last August. I chanced to meet them on Second Street, but I did not talk to them about this case until after I was subpoenaed. [980—921] I did not talk to them about this case in August of last year. I said nothing about the case, not a word, I knew at that time that Dave Powers was employed by the Government. He told me so himself. I could not say how many times I saw Dave Powers prior to August of last year, and after I left the service of the Western Fuel Company. I knew at all the times after that when I saw him that he was employed by the Government. I was told that he was a special agent. I had read in the newspapers that these defendants had been indicted before I met Dave Powers, and I had also read in the newspaper that Dave Powers had been a witness, and that he was also a Government agent. I do not know how many times after reading that I met Dave Powers up to August of last year. I was pretty fairly friendly with him. I was very friendly with Eddie Powers. Neither of the boys ever saw me at Millbrae. I

do not know of their having been there at all.

In the barges, the majority of the fine coal would be on one side, and the majority of the rough coal would be on the other side. If a barge were loaded from the offshore side, the coarse coal would be on the offshore side, and the fine coal would be on the inshore; but you could easily see on which side of the barge each kind of coal was. That would be the case from bow to stern all the way along. If we wanted fine coal we would go to one side, and if we wanted coarse coal we would go to the other side. As a rule we got a wink from one of the hatch-tenders if a weight were to be taken. The width and length of the opening into the hold of the barge depends a good deal upon the particular barge,—some are larger than others. I worked on all the barges. The "Comanche" was pretty nearly all opening. I should judge there was about 25 feet of deck forward and 25 feet aft. There was a hoist engine on both ends. [981—922] As a rule, the custom-house weigher would be standing where the winch was not running when weights were not being taken. The hatch-tender would be over the hatch, standing on the edge of the deck. If the hoisting engine on the bow of the barge were operating, then the custom-house officer would be near the engine on the stern of the barge. The opening in the "Comanche," over which the hatch-tender presides, runs the whole width of the barge, and I should judge its length would be about 60 feet. The depth of the hold is about 14 feet from the deck down. The duty of the hatch-tender

is to blow the whistle for the engineer when it is time to hoist the tubs. He also keeps time for the men. There is not very much noise when the hoisting operation is going on. When they start off, however, there is quite a noise, and it continues more or less as long as we are working. We work under pretty high pressure when the weighings are not being made. It is just about all we can do to fill the tubs and meet the hook. We are always down under the deck of the barge. In answer to the question whether we can see the wink of the hatch-tender through the deck of the barge, I would say that it was an easy matter to see the hatch-tender wink, because when we shove the tubs out into the hatch we certainly could see him in plain view.

(At this point, the witness, Jim Balestra, was recalled at his request to make a correction in his testimony as follows:

"When I gave the date of the subpoena, I stated that I had never had spoke to Mr. Powers about the case until after the subpoena was served to me, so I said it was the 10th of December, but I am mistaken, the first subpoena came to me the 26th of August, [982—923] and it was served to me quite a while before that date.

Q. It was sometime earlier in August?

A. Earlier, in either July or August.

Mr. ROCHE.—Q. In other words, the mistake that you made this morning was with reference to the date upon which the subpoena was served upon you?

A. That is the only mistake.")

Cross-examination of the Witness JIM BALESTRA, by Mr. McCUTCHEN.

I knew, therefore, as early as August that I was required to attend here as a witness on behalf of the Government. It was about a week after that. I think. that I saw the Powers boys. I used to come up here about once a month. When I saw them first after the subpoena was served upon me. I told them that I had been subpoenaed as a witness in this case. They did not tell me that they had been subpoenaed. They did not talk to me about the case at all. What I said this morning was that I had not spoken to Mr. Powers about this case until after I was subpoenaed, but I then thought that the subpoena had been served upon me in December. The talk that I had in August was with both of the Powers boys. We had a little talk about this case. They did not tell me what they were going to testify to. I told them I was likely to get confused on the witness-stand, because I had never been subpoenaed before, so both of the boys told me to go on the stand and tell the truth, and nothing but the truth, and nobody would be able to throw me down. To that extent I certainly did talk with both of the Powers boys before I came here to the courtroom as a witness, [983-924] but I did not tell either of them what my testimony was to be.

The stevedores work four in each end of the hold of a barge; that is to say, two tubs in each end. We push our tub up against the edge and shove it along and out on the hook and up it goes. We are com-

pelled to face the hatch in order to see if the hook is on straight when we hoist the tub. When we are loading the tub our backs are to the hatch. If any of the boys happen to look at the hatch-tender, he would wink with his eyes; if not, he would talk Spanish, so that the custom weigher would not understand it. When two sets of men are in the bow of the barge, and two in the stern of the barge, each man is stooping over with his back to the hatch. Two tubs are working all the time; as a rule one is coming out of the hatch, and the other would be going back to the hatch. When the men are going back with the tub, their backs are to the hatch. Until we get the wink we always assume that the tub is not to be weighed.

- Q. Then, assuming that the tub is not to be weighed before you get the wink, you push the tub up to the side where the coarse coal is, don't you, and you begin to fill it from that side?
- A. It all depends whether we are working or not, because many times, we are held from going ahead, and then we simply fill our tubs and push our tubs out to the edge, and many times the custom weigher would come along and weigh the tub as it stands.
- Q. Many times the custom officer would come and weigh the coal as it stands?

 A. As it stands.
- Q. Then as it stands, he would order one of those tubs up, would he?
 - A. Yes. [984-925]
- A. And those were the tubs which you assume were not to be weighed, were they? A. Yes.

- Q. Now, until you got the wink, you always understand that the tub is to be filled with coarse coal, do you not? A. Oh, not exactly.
- Q. Not exactly; well, haven't you said that you filled the tubs that were not to be weighed with coarse coal, and the tubs that were to be weighed with fine coal?
- A. It all depends whether it was on the rough side or the fine side.
- Q. Why would you go to the fine side until you got the wink?
- A. It was not my place to go to the fine side, if I was not belonging there.
- Q. Exactly; you only went to the fine side when you knew that coal was to be weighed; is that correct?
- A. Correct; but we don't push the tub to the fine side; we simply face it from the amidships into the fine side.
- Q. When you got the wink at least two tubs had been filled, and the third was being filled, was it not?
 - A. Yes.
- Q. So that the two tubs that were filled were filled with coarse coal, weren't they?
- A. Well, at times they would be filled with coarse coal and at times they would be filled with fine coal.
- Q. Why would you fill them with fine coal, if you did not know they were to be weighed?

A. Now, if I was supposed to work on the fine side, naturally, my tub would be full of fine coal all the time.

Mr. McCUTCHEN.—Q. All the time?

- A. Yes. * * * * If I was supposed to be on the rough side, [985—926] then naturally, my tub would be full of the rough coal; when we got the wink, which we did not do all the time, but quite often, we would face our tub to the amidships, so as to get the fine coal into it.
- Q. You made the statement this morning, didn't you, that in all cases where the tubs were weighed they were filled with fine coal—didn't you make that statement?
 - A. When we had a show to do it, we did.
- Q. When you had the show to do it, you did. You did not say that this morning, did you? You said you always filled them with fine coal, didn't you?
 - A. I did not.
 - Q. You did not say that? A. I don't remember.
- Q. You don't remember that you said that this morning? Did you also say this morning that when they were not to be weighed, you always filled them with coarse coal? A. I did not.
- Q. You did not say that. At any rate, you did not intend to say that?
- A. I don't remember having said anything of that kind.
- Q. You don't remember having said anything of the kind?
- A. While I was on the fine side, of course, naturally, I would fill them with fine coal—of course, naturally, we would fill the tubs with fine coal.
 - Q. When you were being examined by Mr. Roche

this morning, did you say you only did that when you were on the fine side?

A. No, I did not.

- Q. You did not say that this morning. Why didn't you tell us that this morning when Mr. Roche put the question to you?
- A. I don't remember which way he asked the question.
 - Q. You don't remember how he asked the question?
 - A. No. [986—927]
- Q. Do you remember that you said this morning that all of the fine coal was on one side and the coarse coal was on the other side?
- A. I think I said the majority of the fine coal would be on one side, and the majority of the rough coal on the other side.
- Q. You said, didn't you, that you would not have any difficulty in seeing on which side the fine coal was and on which side the coarse coal was?
 - A. Exactly.
 - Q. You said that? A. I did.
- Q. Didn't you also say that when the coal or tubs were to be weighed, that you filled the tubs which were to be weighed only with fine coal?
- A. We certainly did it whenever we had a show to do it.
 - Q. Whenever you had a show to do it? A. Yes.
- Q. Then, in the other cases, you did not fill them with fine coal; is that true?
- A. Well, if I was on the fine side, I was compelled to fill them with fine coal.
 - Q. What were you doing on the fine side until you

knew the tubs were to be weighed; you only went there when you knew they were to be weighed, didn't you? What you said this morning, you were mistaken about—why did you go over to the fine side, if you did not know the tubs were to be weighed? What were you doing there?

- A. As I have explained to you once before, the man that belongs to the fine side has got to stay there all the time.
- Q. So there were two of those tubs on the fine side all the time, were there? A. Yes, exactly.
- Q. And two of those tubs were loaded from the fine side all the [987—928] time, and two were loaded from the coarse side all the time?
 - A. Correct.
 - Q. Did you say yes to that? A. Yes, exactly.
- Q. Then half of the tubs when you were working there were filled with fine coal and half of the tubs were filled with coarse coal?
 - A. That is quite true.
- Q. And you say that when you brought the four tubs out, that the customs weigher would very often tell you to take up one of the tubs that had coarse coal? A. Sometimes he would.
- Q. Wouldn't he sometimes tell you to take up more of the tubs that had coarse coal?
 - A. Well, I believe that happened.
- Q. You described the "Comanche" this morning, and you stated there was about 25 feet of deck on the bow and 25 feet on the stern of the "Comanche"?
 - A. On or about that; I don't know exactly.

- Q. How about the other barges,—have they smaller hatches than the "Comanche"?
- A. No, some of them are bigger; the "Melrose" and the "Wellington" are bigger.
- Q. Do you mean to say that the "Wellington" has only 25 feet of decking on the bow?
- A. I mean to say some of the barges are bigger than the "Comanche."
- A. I am talking about the length of the deck on the "Wellington"?
 - A. Well, the "Wellington" is a big barge.
- Q. And how much deck has she on the bow, according to your best recollection?
 - A. She must have at least 40 feet.
 - Q. How much decking has she on the stern?
- A. On or about the same, probably a little less. [988—929]
- Q. Then you would say that at least 80 feet of the hold of the "Wellington" is covered by the decking?
 - A. I think it is; I am not sure of the length.
 - Q. Did you work on the "Wellington" also?
 - A. I did.
- Q. And the coal is stowed underneath that decking, fore and aft on the "Wellington," is it not?
 - A. It is part, not very much of it.
- Q. I asked you this morning, and I don't think that was answered very well, whether there was a good deal of noise while that operation was going on down there?

A. There is a good deal of noise going on, on the barge "Comanche."

* * * * * * *

Mr. McCUTCHEN.—Q. Is it not true, is not that true of all of the barges, that there was a great deal of noise on all of the barges?

- A. No; it is not; some of the barges, it would not make much noise, and on others they make more.
- Q. Is there always one tub underneath the hoist, just ready to be hoisted?
 - A. Almost every time, yes, almost all the time.
- Q. And at that time, that is to say, when there is one tub just underneath the hoist, there is one other tub that has been loaded and is coming toward the hoist, is there not?
- A. One tub goes up and the other one is coming to the edge, when that tub comes back the other one is lifted up.
- Q. At the time that that tub meets the hook is there not another tub going toward the hook that has been loaded?
- A. When it meets the hook one of them goes back and the other one, if they don't go too fast, it will be coming in, but if they go fast sometimes you cannot meet the hook. [989—930]
- Q. You don't understand me. When the tub is wheeled up underneath the hoist where you intend to put it on the hook, is there not another tub coming along toward it at the same time? A. No.
 - Q. Where are the other three tubs then?
 - A. One goes back from the hatch and one is hoisted

(Testimony of Jim Balestra.) and two of them are loading.

- Q. When the hatch-tender whistles so that you understand, or when he gives the signal "On the Scales," does not that tub which has been loaded and which has been brought up to the hook go up on the scales? A. It goes up, yes.
 - Q. Just as it is? A. Just as it is.
- Q. That is to say, that tub, having been rolled out under the hoist at the time that signal is given, is taken up and put on the scales exactly in the condition it was at the time the signal was given?
- A. No, not every time because at times he would give us the wink ahead, maybe a round or two ahead of that time.
- Q. Oh, this wink that you speak of was given a round or two ahead; is that correct?
 - A. At times, not always.
 - Q. Not always? A. No.
- Q. When the wink was given to you, when did you understand the weighing was to take place, the next round, or the second round or the third round?
- A. Then we would be good and careful to overload every time so that when they did take the weight they would be on the safe side.
- Q. Oh, after you got the wink you loaded the tubs to overflowing every time so as to be sure not to get caught; was that it? A. Exactly.

[990-931]

Q. After you got the wink you went on the fine side and you continued to go to the fine side until

the weight was taken?

- A. We faced the tub to the fine side and we scooped it from the fine side.
- Q. During all this time could you see the customhouse weigher? A. Yes, sir.
- Q. Didn't you state this morning that a good part of the time he was down at the winch?
- A. He was down at the winch all the time; many times he would be walking around the deck.
- Q. If he was at the winch, you could not see him, could you? A. If he was not in sight, no.

Mr. McCUTCHEN.—Q. How did the hatch-tender know that the custom-house weigher was going to give him a signal?

- A. Well, he could see, he could see the customhouse officer; he was up on deck; we were down in the hold; we could not see him, but he could; and whenever he saw him coming he simply gave us a wink.
- Q. You said that the custom-house officer was walking up and down the deck a good deal of the time?
 - A. Well, sometimes he would, of course.
 - Q. Well, was it a good deal of the time?
- A. Well, the most of the time they would be either on the deck of the steamer or on one end of the barge.
- Q. Well, he was walking up and down past the hatch-tender a good deal of the time, was he not?
 - A. Oh, a few times, yes. [991—932]
 - Q. How many times during the day?
 - A. Oh, I don't remember that.

Q. And every time he would pass along by the hatch-tender, the hatch-tender would give you a wink?

A. No-

Mr. McCUTCHEN.—Q. How many times, if you can tell, would the hatch-tender get the impression from the movements of the custom-house weigher that the custom-house weigher was going to call for a

weight?

A. At the time I didn't know anything that we were going to have any case of this kind, and consequently I never took any interest and I never kept track of anything of that kind.

Q. Were you always under the hook, immediately underneath the hook at the time when the hatchtender got the impression that the custom-house man was going to call for a weight?

A. Well, one of the tubs would be, as I explained to you before.

(Witness continuing.) I quite often saw the custom-house weigher direct that a part of the tubload of coal be removed before a weight was taken. That was a common occurrence. Common sense told me that the fine coal weighed more than the fine and the coarse combined. I have not heard that matter discussed by anybody since I have been subpoenaed as a witness.

We did not often step on the rope or tail of a tub in order to increase the weight thereof, because we did not have a show. That was the only reason that

we did not do so more often. The length of those ropes or tails is perhaps three or four feet; it all depends on the size of the tubs. They are attached about two-thirds up the tub, and then they hang down, let us say, a foot or two below the tubs. The tubs on a hanging-scale are raised [992—933] about a foot or less. They are raised high enough so as to clear the tub from the floor. The rope, however is supposed to drag. The custom-house weigher at the time is on the deck. The ropes certainly come down below the bottom of the tub. Sometimes the tub barely clears the floor.

Redirect Examination by Mr. ROCHE. I understand the Spanish language in part.

Recross-examination by Mr. McCUTCHEN. I was born in Switzerland.

Further Redirect Examination by Mr. ROCHE. Rooker, the hatch-tender, I think, is a Mexican.

Further Recross-examination by Mr. McCUTCHEN.

I acquired a knowledge of the Spanish language in San Benito County. I was down there up to the time of the earthquake in 1906.

[Testimony of Tony Belish, for the Government.]
TONY BELISH, a witness called for the United

States and sworn, testified as follows:

I now live in San Francisco, and have lived here eight or nine years. I began working for the Western Fuel Company some months before the earthquake and fire in 1906, and continued working for that company about three years. Then I was sick

about two years, when I began working for that company again and continued with it until three or four months ago. [993—934]

The kind of work that I did was shoveling coal down in the holds of barges and in the holds of ships discharging imported coal over sides at Folsom Street or Howard Street bunkers, where the coal was sent up in buckets.

I would go to work on the barges at seven o'clock in the morning and would leave at five o'clock at Sometimes I worked overtime at night also, but that would be only a few times. Such overtime work would last until eleven or twelve o'clock at night. I worked all night a very few times at Folsom Street. When I began working with the Western Fuel Company before the fire Dan Pallas was one of the hatch-tenders. I also worked for Frank Wilson afterward. I was under Dan Pallas three I know David Powers. I was under him as a hatch-tender three or four years ago. I know Rooker, who is now hatch-tender for the Western Fuel Company. I worked under him a few times. The hatch-tender under whom I was working when I left the Western Fuel Company about three months ago was Frank Wilson, and he had been hatch-tender for a long time theretofore.

When I was shoveling coal in the barges weights would be taken sometimes every fifteen minutes, and sometimes every two hours. Four buckets would be weighed out of 25 sometimes, and at other times four out of overy 50. Sometimes weights would be taken

four or five times a day, and sometimes three times a day. At night weights would be taken from two to four times. When the tubs were going on the scales, the practice of the shovelers was to get heavy coal from amidships, if they had the chance and there was no custom-officer around. By amidships coal I mean fine coal. In the wing the coal is rough and I would know when a weight was going to be [994—935] because the hatch-tender would taken holler, "Give me a tub on the scales." There are two different kinds of scales on the barges, -one a platform scale, and the other a hanging scale, the latter of which hooks on to the tub down in the hold. When the coal was to be weighed on the platform scales, the hatch-tender would call for a couple of men to come up from the hold on to the deck and give a hand and pull the tub over on the scale. These men would come up to the deck before the tub came up. After the men came up on the deck the shovelers in the hold would stand there and fill up the tubs. They would fill them up good, you know, load them. would put a little more coal in the tubs when they go on the scales. I have done that myself. The hatchtender gave me a sign to that effect. He would say, "This fellow is going on the scale," and would make a sign which everybody knows who has worked down there five or six years. There would be about 100 pounds difference in the tubs which were weighed and those which were not weighed. When a ship was being discharged over side of imported coal, the tubs that were weighed would, a good many times, be

lighter than those which were not weighed.

On the barges, the hatch-tenders made trouble when the light tubs went on the scales. They would say, "Why don't you give me a heavy tub on the scales?"

I was not discharged from the Western Fuel Company. I had to work on the barge "Wellington" once, three months ago, and it was hard work, and I quit.

Cross-examination by Mr. McCUTCHEN.

I have known David Powers and Edward Powers for eight years. They have three houses, but I don't know in which one [995—936] of them they are living now. They have never called at my house, and I have never been inside of their house, though I have been to their house. I was subpoenaed as a witness in this case about four months ago. I have seen the Powers boys almost every day since then, but have talked nothing about this case to them. I simply told them that I had been subpoenaed in connection with the Western Fuel Company. I used to work for the father of the Powers boys on the trimming on various Pacific Mail ships and on certain German and French tramp ships. That was about three years ago. I started to work for him on Folsom Street. When I was working on ships discharging coal oversides, the bosses told us to send the tubs up light when they were to be weighed. Dan Pallas and Frank Wilson told me that. The coal in the middle of the hold is heavy, and on the two sides light.

When we wanted to load the tubs heavy we used fine coal from amidships, that is the heavy coal.

I have said the difference between the weight of the tubs that were weighed and those that were not weighed on the barges was 100 pounds. I know, because I was on the deck and put the tubs on the scales, and when they had rough coal it weighed about 1800 or 1900 pounds, and when they had fine coal it weighed about 2100 or 2150 pounds.

- Q. But when the tubs were to be weighed and it was known they were to be weighed, they were always filled with fine coal, which you say was the heaviest coal? A. Yes, fine coal is heavy coal.
- Q. And those tubs which were to be weighed did not have any lump coal in them at all?
- A. Sure, they get some lumps, but they get between the lumps, [996—937] fine stuff, pretty fine stuff, and pretty much of the fine stuff.
- Q. When you saw there was no custom officer around, you got the heavy coal? A. Sure.
- Q. Was not a custom-house officer around a good deal of the time?
- A. He is once in a while, but when he was not there, we got the chance to fill with fine stuff.
- Q. You were under the deck a good deal of the time, weren't you?
- A. Not that time when he was weighing—the custom-house officer, when he takes the weight, two men go up on deck.
 - Q. Two men would go up on the deck? A. Yes.

- Q. When those two men went on deck, where would the tubs be?
- A. The full tubs were down in the hold, and the hoisted coal, two men would come up and give them a hand to put it on the scales.
- Q. Was there one tub loaded immediately under the hatch at the time a whistle was blown for a weight? A. One tub right in the hatch full.
- Q. Would the men take some fine coal and go over and fill that tub, then, in the presence of the customhouse weigher?
- A. When the custom-house officer is weighing, they can't put it in, they can't have any chance.
 - Q. That tub would have to go up just as it was?
 - A. Yes.
- Q. Now, the only sign you had, or only signal you had that tubs were to go on the scales was either a whistle, or the hatch-tender would say, "The tub is to go on the scales"? A. Yes.
 - Q. That was the only sign you had, was it not?
- A. Well, sometimes he gave me a sign like that (illustrating).
 - Q. A sign like that?
 - A. Yes. [997—938]
- Q. That is to say, before you knew the tubs were to go on the scales? A. Sure.
- Q. Well, now, didn't the custom-house man tell you that the tubs were to go on the scales, or didn't he tell the hatch-tender that the tubs were to go on the scales?
 - A. The custom-house officer told the hatch-tender,

and the hatch-tender told it to the men down in the hold.

- Q. The hatch-tender would tell it out loud, would he not? He would call out loud, "On the scales," would he not?
- A. Well, there is three tubs in the pile, and one tub in the hatch, and they put more coal in the three tubs in the pile.
- Q. The hatch-tender would call out loud, "On the scales"; isn't that true?
 - A. I don't understand what you mean.
- Q. Wouldn't he say, "On the scales," and wouldn't he say it very loud, so that all the men could hear?
 - A. I don't understand what you mean.
- Q. Did you ever hear the custom-house officer say "On the scales"? A. Very few times.
- Q. Very few times. Did you ever hear the hatchtender say "On the scales"?
 - A. Yes, all the time.
- Q. He said that all the time, that they were to go on the scales? A. The hatch-tender, yes.
- Q. And that was the signal that you had to know that the tubs were to go on the scales? A. Yes.
 - Q. On every occasion, isn't that correct?
 - A. I don't know what you ask me.
- Q. Now, I will put it to you slowly, and see if you do not understand; Whenever the hatch-tender wanted the tub to go on the scales, he said [998—939] out loud, didn't he, "On the scales"?
 - A. Yes, he sung out, "On the scales."
 - Q. And then all the men knew the tubs were to go

(Testimony of Tony Belish.) on the scales, didn't they? A. Yes.

- Q. And that was the sign or signal that you had, was it not?
- A. Yes, but as I told you, there was one tub in the hatch, and the hatch-tender says, "You fellows come up," and there was three tubs in the pile, and you put more coal in those three tubs.
- Q. Now, at the time there is one tub in the hatch, and the signal "On the scales" is given, isn't there one tub going toward the hatch—is there not one tub well toward the hatch?

 A. One tub is in the hatch.
- Q. One tub is in the hatch, and one tub is being brought to the hatch?
- A. Not too close, because it sometimes goes so far it don't meet the hook.
- Q. Well, one tub is under the hatch, or in the hatch? A. Yes.
 - Q. And one tub is coming toward the hatch?
 - A. Yes.
- Q. Isn't it taken well toward the hatch, and the other tubs are being filled; isn't that true? A. Yes.
 - Q. That is correct, isn't it? A. Yes.

Mr. ROCHE.—It is quite apparent that one would have to be going out, because the other tub had just left the hook.

- Mr. McCUTCHEN.—Q. At any rate, one tub is in the hatch, one tub is coming to the hatch, one tub is being still filled, and the last tub is going either into the stern or the bow of the barge; isn't that correct?
 - A. Yes, one tub being in the hatch, and mine being

right in the [999—940] pile, I have lots of time to push it ahead, because they have to go up and dump it.

- Q. How long did it take to load a tub when you were hoisting rapidly? A. To load one tub?
 - Q. Yes.
- A. Well, it took about a minute, a minute and a half.
 - Q. About a minute and a half? A. Yes.
 - Q. Did you work very rapidly, very fast?
 - A. Sure, have to do it.
 - Q. Have to work very fast? A. Yes.
- Q. Did you always work with a shovel, or did you scoop it up?
- A. Sometimes scoop it up and sometimes with a shovel.
 - Q. When you can, you scoop it up?
 - A. I scooped it lots of times.
- Q. When you cannot scoop it up, you put it in with a shovel? A. Yes.
- Q. How many tubs go up in a minute, when you are working rapidly, I mean an hour?
- A. In an hour, sometimes about 60 or 70 tubs, when going fast.
- Q. When they were working rapidly down there, did they weigh every fifteen minutes?
 - A. Sometimes, yes.
- Q. Sometimes they weighed every fifteen minutes. Whenever they weighed every fifteen minutes, how many tubs were they raising?
 - A. Well, fifteen or twenty tubs, sometimes.

- Q. Fifteen or twenty? A. Sometimes.
- Q. Now, are you quite certain about that, Mr. Belish, that they weighed every fifteen minutes—are you quite sure of that?
- A. Well, I know, because some custom-house weighers took them every ten or fifteen minutes, as Bill Hubbard worked about six years ago, by Jesus, he took fifteen tubs one after the other. [1000—941]
- Q. Who was that that insisted on taking weight every ten or fifteen minutes?
 - A. Bill Hubbard, one time.
 - Q. When was that?
 - A. That is a custom-house officer.
 - Q. When was that?
 - A. That was down on Pier 44.
 - Q. When, at what time?
 - A. Five or six years ago.
- Q. At the time he wanted to take a weight every ten or fifteen minutes, how many tubs were they raising an hour?
- A. They were raising an hour about 60 or 70 tubs, they were going fast.
- Q. What other custom-house officers would want to take weights every ten or fifteen minutes, if any?
- A. Sometimes they took them every hour, sometimes they go slow.
 - Q. Sometimes you were going slowly? A. Yes.
- Q. You say at night they took three or four weights? A. Yes.
- Q. That is, would they take three or four weights between the time you began work and eleven o'clock

or the time when you began and five or six o'clock in the morning—I will withdraw that question. You say that you very seldom worked all night; as a rule, when you worked at night, you quit at eleven o'clock? A. Yes.

- Q. What time would you begin work in the evening?
- A. I have started at six o'clock in the evening, sometimes, and worked all night, sometimes worked to twelve o'clock, and sometimes until ten o'clock.
- Q. When was it that they would take three or four weights, was it all night, or from six o'clock until eleven o'clock, or six [1001—942] o'clock until twelve o'clock?
- A. Sometimes all night, sometimes till twelve o'clock, they took three or four; sometimes they took four weights all night.
- Q. Sometimes they would take four weights all night? A. Yes.
- Q. Would that be when they were raising rapidly, or when they were raising the tubs slowly?
 - A. Slowly.
- Q. That was when they were raising the tubs slowly? A. Yes.
- Q. How many tubs would they raise an hour during the night, as a rule?
- A. Well, they are going very fast, they raise about 55 or 60 tubs.
 - Q. An hour? A. Yes.
 - Q. Do you call that slow work or fast work?

A. Well, in the night-time, it is fast enough for night-time.

Redirect Examination by Mr. MOORE.

I know the defendant, Edward J. Smith, and have seen him lots of times on the barge keeping tally.

Recross-examination by Mr. McCUTCHEN.

I also saw the Pacific Mail man keeping tally over there too.

[Testimony of Thomas T. Sawdon, for the Government.]

THOMAS T. SAWDON, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I am now living, and have lived for a number of years, in San [1002—943] Francisco. I have been a marine engineer since 1884, and I was employed in that capacity by the Pacific Mail Steamship Company for about 26 years. After voyages on other vessels I became chief engineer on the "Mongolia" of that company, and held that position from 1906 until 1910. I think I was chief engineer on that ship first on voyage 12.

During the four years that I held that position the "Mongolia" coaled in San Francisco as well as in other places. Her coaling here was done at Pier 42. When we were not carrying much cargo, we used to coal partly in the Orient, and upon other occasions we obtained quite a quantity of coal from the Western Fuel Company in San Francisco. In fact, all the coal we received in this port was from the

(Testimony of Thomas T. Sawdon.)

Western Fuel Company. There used to be a reserve bunker on the "Mongolia," but a partition was put in, and they took part of the bunker capacity for cargo. The "Mongolia" is a sister ship of the "Manchuria." I had in my room as chief engineer a blue-print showing the dimensions and capacity of the "Mongolia" bunkers. I would say that the average quantity of coal that we took here in San Francisco would be approximately about 2,500 to 2,800 tons. When we started to coal here some of the bunkers would be entirely empty, and then there would be others known as broken bunkers, which were partly filled with coal. When I was chief engineer on the "Mongolia" I kept myself advised concerning the capacity of the coal bunkers. I would go in them every day.

(The attention of the witness was here directed to Defendant's Exhibit "J," purporting to be a blue-print of the steamship "Mongolia.")

I recognize that blue-print as a blue-print of the "Mongolia." I do not see on this blue-print a statement of the [1003—944] number of cubic feet in a ton of coal. That appeared, however, on the blue-print which I had in my room on the "Mongolia." It was 42 cubic feet to the ton. After the "Mongolia" had been coaled in San Francisco, I would make an examination of the bunkers into which the coal had been discharged. I had to O. K. the bills that were presented by the Western Fuel Company. I would be a funny engineer not to examine my bunkers to see how much coal I had before

(Testimony of Thomas T. Sawdon.)

I left San Francisco. I certainly examined the bunkers for the purpose of enabling me to pass intelligently upon the bills of the Western Fuel Company. I always went through the bunkers, therefore, when they finished coaling. I would thus find out to what extent the bunkers were filled, so far as it was possible to gain that information. So far as the broken bunkers were concerned, I would know pretty close to the amount of coal that was already in them before the Western Fuel Company started to discharge coal into them. I would know to within 15 or 25 tons. When the Western Fuel Company finished the coaling, I would again examine the bunkers as soon as I could go through the manhole to look around.

Q. During the period of time to which you have referred, these four years, while the "Mongolia" was being coaled from time to time at the port of San Francisco, state whether you noticed at any time a shortage in the quantity of coal supplied to your ship by the Western Fuel Company, as tested, between the quantity of coal which you found to be upon the ship and the bill presented by the Western Fuel Company for your O. K.

A. The amount that they discharged into the ship, that is what I am trying to get at; where we take the bunkers at 42 feet [1004—945] and the man tells me that the coal is running heavy, 39 cubic feet, $38\frac{1}{2}$, it goes to show that between the weights I had no kick about it; in other words, if the coal was run-

(Testimony of Thomas T. Sawdon.) ning 42 feet, as we would take the bunker capacity, it would show a shortage of coal.

Mr. ROCHE.—Q. In ascertaining whether there was or was not a shortage, would you take the cubic feet contained in a ton of coal as specified in your blue-print and plans? A. Would I take it?

Q. Would you take 42 cubic feet to be contained in the ordinary ton of coal?

A. That is what we were going by; that is what we went by on the ship.

Q. Assuming that there were 42 cubic feet of coal in a ton, upon these occasions to which you have referred was there or was there not a shortage in the coal?

The COURT.—He has said there was on that assumption, and he has further said inferentially that if he took the statement of Mr. Park, or the other gentleman, that the coal was running heavy at 39 feet, that there was not.

Mr. ROCHE.—Very well. Your Honor is correct in that statement.

The COURT.—Yes.

I never in San Francisco measured the coal for the purpose of ascertaining how many cubic feet there were in a ton, but I did make such measurements in Japan.

The marine superintendent of the Pacific Mail Steamship Company, when I was chief engineer on the "Mongolia," was Chisholm. [1005—946] I never had any conversation with the defendant Mills

(Testimony of Thomas T. Sawdon.) about a shortage on my ship.

In answer to the question whether I ever watched the operations which resulted in the coaling of my ship, that is to say, the hoisting of the tubs from the barge, I would say that I have stood there at times for a short while. I have never been there for as much as half a day. As I would be going ashore, or over to the office, or going back on deck, I would naturally stop for a spell of 10 or 15 minutes to look at the operation, but I never remained for any length of time to see what was going on. On such occasions I would be on the boat deck looking down. In that position I would be probably 30 or 40 feet away from the point where the bucket would be tripped and the coal discharged. I could not look straight down, because we always had a canvas stretched across to keep the dust off the ship. I would take a slant down from the side sideways. I was a little below the point where the tub was tripping. If I watched closely I could see the tub or bucket as it was being hoisted. The bucket, however, was travelling right fast, you know. In answer to the question whether I upon occasions watched the buckets, I would say that I have for a short time. I have taken a look on many occasions, and in connection with different voyages. Sometimes I have observed weights being taken, and I would notice the tubs which were weighed as they were being hoisted up from the scales. I would notice then that the tubs that were weighed were quite full. There would be more coal, as a general thing, in those tubs than in (Testimony of Thomas T. Sawdon.)

the tubs that were hoisted and were not weighed. I would say that the ordinary tub, that is to say, the unweighed tub, would be run on water measure, by which I mean that it would be full to level. [1006—947] The other tubs, that is the weighed tubs would be rounded up a little, and there would be a little more coal in them. That is the way it appeared to me.

- Q. You have said that the Western Fuel Company coaled your ship from time to time while at San Francisco. That is correct, is it?
 - A. That is correct.
- Q. And that after the coal process had been completed and before the bills were presented to you you visited the bunkers or looked into the bunkers for the purpose of finding out how well filled they were and what quantity of coal you had in the bunkers?
 - A. Yes, sir.
- Q. After leaving San Francisco and while the boat was consuming coal for the purpose of propelling it across the Pacific, and upon other occasions back again, would you make a calculation for the purpose of determining whether there was or was not a shortage of coal on board?

A. No, I never made a calculation. The coal was running heavy—rotten—and I charged enough, and when I got over to the other side I would know what I had in the bunkers then and I certainly razooed it down to make it come out right; in other words, going out maybe I would charge 180 or maybe 185 tons a

(Testimony of Thomas T. Sawdon.)

day, and when I got over, if I had surplus coal over what I charged I cut it down to bring it down accordingly; in other words, maybe I was only burning 168 tons or 170 tons.

Q. In other words, you make an average?

A. We would make an average on the outward voyage.

Mr. ROCHE.—Q. Do you know whether the bills which were presented from time [1007—948] to time by the Western Fuel Company for coal claimed by it to have been discharged upon or laden into the "Mongolia" were paid?

A. Well, I don't know anything at all about that. All I had to do was to sign for the amount received, and the Commander signed, and the papers went to the office.

- Q. Did you O. K. the bills as they were presented?
- A. I O. K.'d them for the amount received.
- Q. Did these bills specify the number of tons and lbs. of coal which the Western Fuel Company claimed they had discharged into the "Mongolia"?
 - A. They did. They even carried it out to the lbs.
- Q. And, of course, you made a memoranda, did you not, of the quantity of coal, both tons and lbs., which the Western Fuel Company claimed they had discharged into your ship?
 - A. You will find that on the abstract.
- Q. And those figures were placed upon the abstract by you; is that correct?
 - A. Yes, sir, that is correct.

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

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Plaintiffs in Error,

VS.

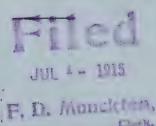
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(Testimony of Thomas T. Sawdon.)

Q. So you were familiar with those figures at the times you started upon each one of your journeys?

A. Why, yes, it was put upon the abstract before we started on the journey.

* * * * * * * * *

Q. Did you notice any difference between the quantity of coal which was set forth in the bills presented to you by the Western Fuel Company in which the quantity of coal which the Western Fuel Company claimed it had deposited in your ship was set forth and the quantity of coal which you found in the bunkers, estimated by 42 cubic feet to the ton?

Mr. McCUTCHEN.—If your Honor please, if it is to be [1008—949] determined by the estimate of 42 cubic feet to the ton, that could have been made without reference to the consumption of coal; that is to say, it could be determined by the dimensions of the pile of coal.

Mr. ROCHE.—There is nothing in the question about consumption.

Mr. KNIGHT.—Let me suggest this, with the permission of your Honor, that counsel has not in that question offered to show that it was 42 cubic feet to the ton. That offer of proof is lacking.

The COURT.—That is quite true; that is an element that is absolutely lacking.

Mr. OLNEY.—And I would further suggest, your Honor, that the witness has already answered the question; he says that if there were 42 feet he would find a shortage, and if there were 37 or 38 feet, as stated here, there was no shortage.

(Testimony of Thomas T. Sawdon.)

The COURT.—Yes, I know, but this is only putting it in other words. He has already stated he would find a shortage if he measured it at 42 feet.

Mr. ROCHE.—Then I won't press that question in view of that testimony. That is all.

(There was no cross-examination of this witness.)
[1009—950]

[Testimony of J. T. F. Burns, for the Government.]

J. T. F. BURNS, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now live, and have lived for about 10 or 11 years, in San Francisco, and am employed in the customhouse service as an opener and packer, and have been so employed for about three years. Before that I was a laborer. I first joined the custom-house service in October, 1906, when I was employed as assistant to the weighers and inspectors doing the weighing and packing and opening up of merchandise on the front imported into San Francisco from foreign countries. My official designation then was "laborer." I know where the Mail Dock is situated in San Francisco. The first three years of my employment in the custom-house service I would be assigned there very occasionally merely to relieve some regular custom-house weigher. On such occasions I would be watching the buckets raised and tallying the buckets as they came out of the coal barge and went into the ships. I never called for any weights. I don't suppose I acted as assistant

weigher during the first three years of my employment more than three or four times, nor did I act more frequently in such capacity thereafter, so that I very rarely acted as assistant weigher at all. I would not remain upon any barge over an hour at a time on any occasion.

Q. I want you to go on and state to the jury what, if anything, you observed upon these occasions upon which, or upon some of these occasions upon which you acted as assistant relief weigher upon the barges.

A. Well, my appointment as assistant [1010—951] weigher, would be for the weigher to be relieved to go to the toilet, or go and get paid, some little thing that would not take long, and in weighing the coal, I noticed that some buckets were fuller than others; I also noticed that there was a signal—a signal would be blown a certain way, and the bucket would be fuller that time than any other time.

I was on the docks in the vicinity of the barges very nearly every day. I would sometimes be on the steamers loafing around and waiting for my duties to begin as laborer. I was for two seasons on a tea detail getting samples of tea. I would perform my duties in this connection on the Mail Dock. I would also be putting merchandise on the scales, getting the gross weight, working with the inspectors, etc. The greater part of my duties were performed upon the dock rather than upon the liners. It was upon those occasions that I would observe the operations which resulted in these liners being coaled from the barges. I was located upon and about the Mail Dock

for about three years, beginning with 1906 and up until October 1st, 1910. I would not be on the decks of the liners more than 15 or 20 minutes at a time, but I would go on deck as often as three or four times a month and sometimes three or four times a day. I would be just loafing about waiting for other freight to come up so that I could get at the freight with which I had to deal.

- Q. Upon some of those occasions, did you observe weights being taken? A. Yes.
- Q. And upon other occasions, would you observe the tub being hoisted from the hold of the barge to the falls of the hoist? A. Yes. [1011—952]
- Q. Did you, upon some of those occasions, observe the condition of the tubs, so far as the coal was concerned? A. Yes.
- Q. I want you to go on and state in your own way what you observed with reference to the quantity of coal that would be contained in these tubs on occasions when weights were not being taken, and what you observed with respect to the quantity of coal contained in the tubs upon occasions when weights were taken.
- A. My observation of the weighing was that they would take along about every fourteenth or fifteenth tub, and when they came up out of the hold of the barge, the coal would be all falling off of it, and the other times, you could not see where the coal was in the bucket; once in a while you could see a big lump sticking out of the tub, and none on the side. I noticed on one occasion, I saw one weigher having

trouble with the men shoveling coal into the tubs, and he weighed ten tubs. After he took the first three weights, I noticed that the other seven buckets were fuller than the first three tubs.

- Q. To what extent?
- A. To the extent that they came up out of the hold with the coal falling off of them.
- Q. Do you recall whether upon those occasions you observed the character of the coal, as to whether it was lump coal or fine coal? A. No, I don't.
 - Q. You do not recall. A. No.

Apart from this specific occasion, I would occasionally observe the coaling operation from alongside the barge. I would be about 20 feet I suppose from the hatchway. I could not give any stated number of times that I, during the first three years of my service, observed weights being taken upon the barges. I cannot fix that definitely at all. It would [1012—953] sometimes occur more than once in a given day.

- Q. Upon those occasions, ordinarily, and without referring to any specific occasions, what did you observe regarding the quantity of coal that would be contained in the tubs that were weighed?
 - A. Well, the exact weight, I could not tell.
- Q. I do not mean so far as the pounds or tons are concerned, but I mean as to what you observed regarding the quantity of coal in the tubs, how was the coal located upon the tubs?
- A. Well, it always, at any rate it rather looked heaped up on the center, and that is the reason I

always had the idea it rolled off the center of the tub.

- Q. What would you ordinarily observe regarding the quantity of coal contained in these tubs which were not weighed?
- A. Well, sometimes you could see the coal in the tub, and sometimes you could not.
- Q. How many barges, ordinarily, would be coaling these liners?
- A. Well, at the first start, they would have one barge on one side of the ship, and when they got the freight out of the ship, they would put another on the other side, on the offshore side.
- Q. That is, there would be one barge, between the ship and the dock? A. Yes.
- Q. And another barge on the offshore side of the vessel? A. Yes.
- Q. Upon those occasions, while you were acting as assistant weigher, relieving, temporarily, regular assistant weighers, did you ever have any difficulty or trouble, yourself, either with a hatch-tender or the men in the hold, regarding the quantity of coal which is being placed from time to time upon those tubs?

 [1013—954]
- A. Well, on one time when a tub came up, it was not anywhere near full, and I hollered down the hatch, "Fill them tubs up," and the answer I got back don't look very good in print, so I did not bother any more.

I remember visiting the Mission Street bunker in 1908 to relieve a man named Regan. He was detailed to cord and seal the trucks on the sides of the

coal cars in the night-time so that the cars could not be moved during the night. He would go there then in the morning and break the seal before they could take the coal off, and, between 12 and 1 o'clock he would have the cars sealed in a similar fashion. I sometimes relieved Mr. Regan and did this work for him. The chutes themselves were also sealed up. I would take the cord and twine and put them around the lock of the chute and put the Government or custom-house seal thereon. I think that practice was pursued for about six months.

- Q. Now, do you recall an occasion when you relieved Regan observing coal being discharged into the coal cars? A. Yes.
- Q. Just go on and state to the jury what you observed upon that occasion, in that connection.
- A. I walked down the tracks when I relieved Regan, I was probably 200 feet from it, and he was explaining to me what I had to do, and I walked down there and I noticed the way the coal was coming out of the chute into the coal cars; the cars would be brought up half way on the chute, and about one-half of the coal would go into the car, and the other half would go down the chute into the bunkers. [1014—955]
 - Q. Was that the forward or rear end of the car?
 - A. The forward end at that time.
- Q. In other words, a part of the chute projected beyond the side or end of the car, is that correct?
 - A. Yes.
 - Q. Do you recall the names of any of the employees

that were working upon that train of cars at that time?

- A. No, I just know the man by sight. I don't know his name.
- Q. At the time you reached the point where the cars were located, had the coal already flowed through the chute from the hopper above?
- A. Yes, that first car had been filled, and they moved up the next car. With the next car, the same performance was gone through, and I notified them if they did not move the car up forward I would seal the car up and send for the inspector.
 - Q. What did he do?
- A. He moved the car up and loaded the car and called be a son-of-a-b——.
- Q. What proportion of the coal was going into the car and what proportion of the coal was going down into the bunker?
- A. There was a quarter going out of the chute that went down below into the bunker.
- Q. Was that the only time that you saw anything of that kind upon the Mission bunker?
- A. Yes, that was the only time on the Mission bunker.

Cross-examination by Mr. McCUTCHEN.

I have been on the Mission Street bunkers several times off and on. I suppose altogether about 25 or 30 times. The occasion on which I saw the coal flowing over the car was the only occasion on which I was up on those bunkers when they were unloading. The other times I was there for the purpose of [1015—

956] testing the scales. I became an opener and packer in 1910, and have had no promotion since then.

- Q. When the coal flowed over the car on the Mission Street bunker in the way you have described, did you report it to anybody?
 - A. No, sir, I did not.
- Q. Didn't you know that there was an assistant weigher there representing the Government?
 - A. Yes, sir.
 - Q. Why didn't you report it to him?
- A. I thought it was his business to see it as well as it was mine.
- Q. You thought it was part of his duty to see whether coal did overflow the cars, or not, did you?
 - A. Yes, sir.
- Q. Did you feel that your duty to the Government made it proper that you should report that to him?
- A. My duty made me feel that it did, but in order to hold my position I knew it was better not to report it.
 - Q. What did you go there for at that time?
 - A. Because I was detailed there.
 - Q. What for? A. To relieve this man Reagan.
 - Q. What was his duty there?
- A. His duty was to seal that car and see that they came up all right.
 - Q. To see that they came up all right?
 - A. Yes, sir.
- Q. You went there for the purpose of seeing whether those cars overflowed, did you not?

- A. No, sir.
- Q. What did you go there for?
- A. To see that the cars were put on the chute right, and to see at quitting time that they were properly sealed. [1016—957]
- Q. You went there, did you not, to see that all of the coal was weighed,—that was really your purpose, was it not? A. Yes.
- Q. You say that having seen that, you did not make a report of it to anybody.
- A. I did not make a report of it because it stopped when I ordered it to stop, it didn't go any further.
 - Q. Who was your superior officer at that time?
 - A. A man by the name of Wooster.
 - Q. Did you report it to him?
 - A. No, sir, I did not.
 - Q. Why didn't you report it to him?
- A. Because the man was too dishonest to report anything to.
 - Q. That man Wooster is dead, is he not?
 - A. Yes, I am sorry to say he is; I wish he was here.
 - Q. How long was he in the Government service?
 - A. I can't tell you.
 - Q. When did he die?
 - A. I guess he is dead pretty near a year, isn't he?
 - Q. I don't know; I am asking you.
 - A. I don't know how long he is dead.
- Q. Was he in the Government service all the time you were in that service, up to the time he died?
 - A. Yes, sir.
 - Q. And he had been in the Government service a

great many years before you were employed by the Government? A. Yes, sir.

- Q. And he was your superior officer?
- A. Yes, sir.
- Q. And he sent you there for the purpose of seeing whether all that coal was weighed?
- A. I could not say whether he gave me the details or who gave it to me, but I got it from his office.

 [1017—958]
- Q. And you knew that you were sent there for the purpose of seeing that all the coal was weighed?
- A. Yes, sir, I seen that it was all weighed after I got there.
- Q. But you didn't make a report that some of it was not weighed? A. No, sir.
- Q. Do you know who the weigher was that was on the dock at that time?
- A. I think the weigher on the dock at that time was Nealon. I could not say for sure; I think it was Nealon.
 - Q. And you did not say anything to him about it?
 - A. I did not.
- Q. Did the response that the man made to you on the Mission Street dock when you spoke to him anger you?
- A. No, it didn't anger me; that is one thing nobody can do, is to anger me.
- Q. Who was the weigher on board the barge at the time you say a peculiar signal was given?
 - A. A weigher by the name of Root.
 - Q. Where is he?

- A. He is out of the service.
- Q. Do you know where he is?
- A. No, sir, I do not.
- Q. Then you never saw that on but one occasion?
- A. Oh, I didn't say I saw it on but one occasion; I saw it several times.
- Q. Was Root always the man there when you saw it? A. Oh, no.
 - Q. Who were the other Government weighers?
 - A. I don't know; I didn't keep any track of them.
 - Q. Did you report that to them?
 - A. No, sir, I did not.
 - Q. Did you report it to your superior officer?
 - A. No, sir, I did not.
- Q. Did you report it to anybody connected with the Government service?
 - A. I did not. [1018—959]
- Q. You have said that you were under Mr. Wooster? A. Yes.
- Q. Was there anyone over you, and between your grade and that of Wooster?
 - A. Yes, there were assistant weighers.
 - Q. Who were they?
- A. All the men who were assistant weighers down there.
 - Q. Were you subject to their orders?
 - A. Yes, sir.
 - Q. Did you regard all of them as dishonest men?
- A. No, sir, I did not, I regarded them as thoroughly honest.
 - Q. Why didn't you report this to them, what you

(Testimony of J. T. F. Burns.) saw on the barges?

- A. Well, they should have their eyes, it is their duty to see it and not mine.
- Q. If they were thoroughly honest men why didn't you call their attention to it?
- A. Because I didn't propose to be classified as a stool pigeon going around telling every man what he ought to see, when they ought to see it themselves.

Redirect Examination by Mr. ROCHE.

Mr. Wooster who was chief weigher in the employ of the Government, and to whom I have referred, was either dismissed or allowed to resign before his death. He did not die in the service.

[Testimony of Frank McKenna, for the Government.]

FRANK McKENNA, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live now and have lived for about 31 years in San Francisco. I am now working at Payne's Bolt Works, and have been there for about eight months. Prior to that time I was employed on the dock of the Pacific Mail Steamship Company for about 9 years doing stevedoring. At odd times I was employed by the [1019—960] Western Fuel Company. Beginning, I think 7 or 8 months previous to the earthquake, I worked on their barges. They had only two that they used to dump on top with. I worked for them up to as late as two and a half years ago, I guess, and on those two barges only. The

other barges had automatic dumpers. My work with the Western Fuel Company as dumper was occasional. I was able from my position up in the framework of the rigging to see the tubs that would rise from time to time from the hatch. I had to watch out closely for that so as to avoid getting hit by the rising tubs. Those barges would coal various ships, including the ships of the Pacific Mail Steamship Company. During the 7 or 8 months before the fire when I thus worked as dumper, I noticed the weights being taken. Sometimes they worked only six men and sometimes eight men. If only six were working, they would only weigh three tubs every They used the platform scales on those barges, and, in order to put a tub on the scales, two men had to be summoned from the hold of the barge. On such occasions the Government weigher would say that he wanted to weigh such and such tubs and the hatchtender would sing out for two men to come up from the hold.

Q. When the hatch-tender would sing out "two men come up, tub on scales," where would the first tub be that was afterwards to be weighed?

A. The first tub would not be hoisted yet. It is after the last tub lands that he says "two men come up," and then they would hook on a tub and come up and weigh it. There was no loss of time.

Q. You understand what is meant by meeting the hook, do you not? A. Yes, sir.

Q. Would this signal be given by the hatch-tender before the [1020—961] hook would be met?

A. Well, as soon as the tub was landed. Then those men would shove their tub in and then they would come up and those other fellows would fill that tub and they would weigh a round of tubs,—three.

Q. What, if anything, did you notice as to the quantity of coal in tubs that were weighed as compared with those that were not weighed?

A. Well, on account of weighing them, and they had so much time there, they could fill them a little fuller.

Q. Irrespective of what they could do, Mr. Mc-Kenna, what was the practice as observed by you?

A. Well, the men were worked so hard to meet the hook that the tub would not come as full according to my mind as I could see it as it would be when it came on the scales because then they were not worked to death and sweated to death.

Mr. ROCHE.—Q. Did the tubs which were weighed contain more coal so far as quantity was concerned than the tubs that were not weighed?

A. Well, as I explained before, the men would have a little more time below and they would naturally scrape up and shovel in the scrapings and everything and that would naturally be a little more coal at times than at previous other times. Then again they would probably put big lumps in at times to block the hole so as to have a little rest, and then they would have to get crow-bars to open up the hole.

Q. Can you describe the appearance of the coal in the tubs, whether it was below the sides of the tub, or above the sides of the tub, or how?

A. Sometimes there would be lumps, and at other times finishing up the barge there would be screenings like, and naturally the screenings in my eyes would weigh more than the lumps, than [1021—962] the heaviest part of the big lumps.

Q. Let me direct your attention to the tubs that were being weighed during the period of eight months prior to the fire; just describe to the jury how the tubs would appear so far as the quantity of coal was concerned, whether the coal would be above or below the sides of the tubs?

* * * * * * * * *

A. Well, I should judge, just as I said before, that the tubs coming up to me apparently they looked a little bit heavier when they went on the scales than they did otherwise because naturally looking at them more on the scales perhaps made me think so.

I worked on and off for the Western Fuel Company for about $6\frac{1}{2}$ years after the fire. My last work for them was $2\frac{1}{2}$ years ago on the "Korea." My work was of the same character as before the fire, namely, dumping. I had the same opportunities for observation as before the fire.

Q. What was the practice pursued by the Western Fuel Company after the fire with reference to putting coal in tubs which were weighed as compared with the quantity of coal placed in tubs which were not weighed; in other words, would your testi-

(Testimony of Frank McKenna.) mony be the same?

- A. Well, I will explain that myself now in a second. Just as I say, when the tub would be on the scale we would naturally take more notice to it because when the tubs are coming up, it is just, "there she goes" and you dump it, and down she goes again. When I went on the scale we would naturally take notice—not that it concerned us in the least, but we just may have looked down to see the fellows pulling them on the [1022—963] scale. It was about the same.
- Q. Was the same procedure followed, so far as the signal was concerned that was given by the hatchtender?
- A. It is just as I said,—he would say "on the scales," "two men come up" and they would land their tub and come up to help pull the tub on the scales.
- Q. The two men would come up before the tub was hoisted from the hold?
- A. Oh, yes, there would be no delay, they would go up immediately.
- Q. And how many minutes would be occupied in weighing a round of four tubs, when four tubs were weighed?
- A. A round of four tubs would not take more than 6 minutes.
 - Q. 6 minutes to weigh a round of tubs?
- A. Maybe 7 minutes for four tubs. It was according to the barge's list; sometimes they would

miss the rope and would have to pull a little heavier or a little harder.

* * * * * * * * *

Mr. ROCHE.—Q. Would you, upon occasions, see the quantity of coal that was contained in the tubs which were not weighed?

A. Oh, I have seen tubs coming up there with lumps sticking up a foot or more.

(There was no cross-examination of this witness.) [1023—964]

[Testimony of J. F. Barfield, for the Government.]

J. F. BARFIELD, a witness called for the United States and sworn, testified as follows:

Direct-examination by Mr. ROCHE.

I live now, and have lived for about 11 years, in San Francisco. I have been for nine years and am now employed as an assistant weigher in the custom service. During the first three years of that service I frequently weighed coal; during the last six years I have weighed merchandise generally, including some coal. I was quite often on the Folsom Street bunker during the first three years, and would be located then in the scales-house. During that period I once had occasion to go down from the scales-house to the floor of the bunker where the tracks are and where the cars run, and I saw an employee of the Western Fuel Company shoveling coal, that I was quite sure had not gone over the scales, down into a pocket. He was shoveling coal from the

(Testimony of J. F. Barfield.)

flooring near the car tracks. That is the only occasion that I can recall where I had any difficulty in regard to that.

In weighing coal in the scales-house I face in a westerly direction, away from the hoppers or towers. The distance between the first hopper and the scaleshouse would vary, depending upon where the hatch was on the ship they were discharging from, but, I should say, approximately, 50 feet would be the greatest distance. If I were to turn and face east it would not be possible for me to see very far under the first hopper. If coal were being discharged from the remaining three hoppers, or from any of them, into the cars and were permitted to fall from the cars into the bunkers below, a weigher standing in the scales-house and facing east could not see the coal drop down into the bins below. So, also, it would not be possible for a weigher standing in [1024-965] the scales-house and facing easterly, toward the hoppers, to see a man shoveling coal from any part of the framework located near the upper part of these bunkers into the bins below, if such shoveler were behind the first hopper. So, also, it would not be possible for a weigher, located and facing as above stated, to see coal dropping into the bins or bunkers below from overflowing cars.

Cross-examination by Mr. MOORE.

As I have said, I frequently weighed on the Folson Street bunkers during my nine years of service, The man whom I saw on one occasion shoveling coal (Testimony of J. F. Barfield.)

that I thought had not been weighed down into the bunkers below had been recently employed. The foreman, Mr. Mayer, explained to me that he was a new man. Mr. Mayer reprimanded him after I had mentioned the matter at once to Mr. Mayer. That occurred, I think, about three or four years ago.

Cross-examination by Mr. McCUTCHEN.

In addition to the assistant weighers, there are custom-house weighers or custom-house inspectors in the employment of the Government. I have seen them around the Folsom Street bunkers while I was performing my duty there. In addition, there are employees of the Government styled "laborers" who go about from place to place where a dutiable cargo is discharged. I have seen them on the Folsom Street bunkers, but that was an uncommon occurrence. [1025—966]

[Testimony of Arnold H. Freund, for the Government.]

ARNOLD H. FREUND, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live now, and have been living for going on six years, in Oakland. I am now, and have been for the last nine years, an assistant weigher in the United States Custom Service. My duties are to weigh dutiable merchandise. During the first six or seven years of my service I should say that about 75 per cent of my time was devoted to the weighing of imported coal. I would be stationed mostly on the

barges in connection with rebate coal. It was, however, of frequent occurrence that I would be stationed on the Mission Street or Folsom Street bunkers weighing imported coal. The Mission Street bunker was torn down about three years ago, I think. The scales-house prior to the dismantling of the bunker was located about the center thereof. The offshore bunkers were out at the east end. They were at the extreme end of the dock. The inshore bunker was located on the north side, clear to the end, both east and west of the scaleshouse. The coal would be discharged upon that dock west of the scales-house; there were four towers west of the scales-house. The weigher faced east, that is, toward Oakland. The discharging operations were at his back.

The scales-house at Folsom Street is at the shore end of the dock. The hoppers are east of the scaleshouse. The weigher faces west.

At both bunkers, Folsom Street and Mission Street, the weigher faces so that his back is toward the towers or hoppers.

I am familiar with the rod which depends from the beam [1026—967] on the Mission Street scales where the coal is weighed. During that part of the time when I was employed as assistant weigher upon the Mission Street bunker, that rod was exposed. I can't say for what length of time, however. If I remember, when I worked there the first few times the rod was exposed; then I was away for a time, and when I came back I found they had boxed it in.

I am acquainted with the defendant, Eddie Mayer, and have known him since I have been in the service. I recall an occasion when he was located in the scales-house at the Mission Street dock and permitted his feet to come in contact with that exposed rod. I don't know exactly when that occurred, but I think it was just before the fire of 1906. He was keeping check with me in the scales-house which is his ordinary duty. He would sit on the north end of the scale. I sat on the south end where the hanger beam was. We were both facing east. There is a table underneath the beam. Both of us used the table in keeping our books.

Q. Just go ahead and relate all the circumstances connected with this occasion to which you are testifying.

A. Well, as he stepped out, as I say—I don't know what for, but to tell the motorman where to distribute the coal to that was going to various pockets, why, I took a piece of chalk out of .my pocket, and I rubbed this rod, and when he came back and sat down, and after I had weighed a load, he sat back and put his feet up on the desk, kicked his chair back, and I says, "Eddie," I says, "Where did you get the chalk on your pants?" and he says, "Darned if I know." "Well," I says, "you want to keep your leg away from the rod and cut out your monkey business," and he laughed and called me a lobster, or something, I have [1027—968] forgotten which, and I simply told him that; that was the end of it, I never bothered with him after.

- Q. Did you afterward require him to sit away from that rod?
 - A. I cautioned him to keep clear of it.
- Q. Do you remember how soon after that the rod was boxed? A. No, I can't tell you.

I am familiar with the layout of the bunkers at the Folsom Street dock. The first tower is anywhere from 17 to 30 feet from the scales-house. The weigher in the performance of his duties is, while coal is being discharged into the hoppers and from the hoppers into the cars and while the cars are being run upon the scales, required to keep his eye upon the beam. The weighing is more or less rapidly done. If the weigher were to turn around and face easterly, he would only be able to see the first hopper. He could not see coal being discharged from the hoppers into the cars and from the cars into the bunkers below, even though he looked easterly. There is considerable noise made in discharging the coal into the hoppers and that noise continues always.

I have many times, during the time that I have acted as assistant weigher on the Folsom Street bunker, observed coal being shoveled from the framework or runway into the bins below. I complained to the man himself who was doing that, and, another time, I told Mr. Mayer and he went down and scolded the man in my presence. The operation was not afterward repeated that I saw. I did not again see coal shoveled into the bins below on that ship, but I afterward saw them doing that on

(Testimony of Arnold H. Freund.) other ships, but I cannot say how many times. I made several reports in regard to the work to Mr. Wooster. [1028—969]

I have frequently weighed drawback coal. I think it was from 1904 or 1905 until the time when they took off the duty. Such coal would be weighed from the barges. I have worked often on the barges in the daytime and sometimes at night-time. That is true with reference to practically all the barges operated by the Western Fuel Company. I have come in contact with the hatch-tenders and employees of the Western Fuel Company. I sometimes had trouble on these barges.

Q. I want you to go on and state to the jury what you have observed from time to time while you have acted as assistant weigher upon those barges weighing drawback coal so far as the filling of the tubs is concerned?

A. Well, I can state that it has been the usual thing to always have trouble; the coal shovelers if they knew you were going to weigh would load the coal up to the latch, right up as high as they could on the tubs; I would holler down the hatch to Mr. Parks—he was always clerking as a rule with us—he would kick about it and then I would go over the hatch and tell them that if they didn't quit it we would make them. I have also spoke to the hatchtender and he has told them also. I have had tubs come up that were loaded so that when they came out of the hatch, or when I came to the hatch—we had orders not to stand over the hatch; our orders

from the chief weigher were to stand clear of the hatch and take the tubs at random, but when they knew I would weigh I have seen them throw on 3 or 4 or 5 shovels of coal to fill it up and I would let it go by, I would not weigh it.

- Q. That is, upon occasions you have seen them put on 3 or 4 or 5 shovels of coal when they thought a tub was to be [1029—970] weighed?
 - A. Yes, sir.
- Q. And you say that on some occasions you refused to weigh those tubs?
 - A. Yes, sir, I did; I would let them go by.
- Q. Who determined when a weight was to be taken? A. I would.
- Q. That is, when you were acting as weigher you would determine when a weight was to be taken; is that correct? A. Exactly.
- Q. What, if anything, would you say to the hatchtender?
- A. When they would shove the tub out to the hatch I would say, "Frank" or "Dan," or whoever it was, "on the scales."
- Q. Was it your practice to weigh the tubs in rounds or singly?
- A. Sometimes in rounds, sometimes single, sometimes two at a time, sometimes three at a time.
 - Q. What was the common practice?
 - A. Random weights, one tub at a time.
- Q. You say the usual practice was to weigh one tub at a time? A. Yes, sir.
 - Q. And not a round of tubs?

- A. Well, it was according to what barge we were on. There was the barge "Nanaimo" and "Comanche," where the tub is away down in the skin of the ship, we have to leave them work 4 or 5 hours before we could get the skin clear for the tub in order to hang a tub and weigh it, and then of course we would have to take one or two rounds to catch up with our weights; we were required to take one weight in 15.
- Q. You were referring now to what is known as a hanging scale or rod scale, are you?
- A. Yes, exactly. The scale is up here on deck, and a long rod 10 or 12 feet in length hangs down the hatch and they hook [1030—971] it on a chain and hoist it until it is clear of the skin.
- Q. How many barges to your knowledge were there upon which there were what you term a hanging scale?
- A. The barge "Comanche" and the barge "Nana-imo."
- Q. After either one of those two barges had been loaded with coal you say that it required some time before you would be permitted to take a weight?
 - A. Exactly.
- Q. And that was because the tubs would be weighed upon the end of the rod and you would have to wait until they got down to the skin of the barge before a weight could be taken; that is correct, is it not?
 - A. Yes, sir.
- Q. And it did sometimes occur, did it not, that 4 or 5 hours would elapse between the time that the

barge first commenced discharging and the time you could first take a weight? A. Yes, sir.

- Q. And then you would weigh a couple of rounds?
- A. Yes, sir.
- Q. And use the weight of the 8 tubs for the purpose of determining the quantity of coal which previously had been discharged?
- A. Exactly. I wrote a couple of letters about that to the chief weigher and complaining about the unsatisfactory condition of it.
 - Q. Who was the chief weigher?
 - A. Mr. F. L. Wooster.
- Q. You would indicate to the hatch-man, as I understand it, your desire to take a weight?
 - A. Yes, sir.
- Q. And what, if anything, would the hatch-tender do?
- A. Give the signal to the engineer, or sometimes call up two men out of the hatch so that they could pull it on the scale.
- Q. It is a fact, is it not, that one or two men would have to be called up from the hold of the barge in order to weigh [1031—972] the coal, when you were not weighing the coal upon these hanging scales? A. Exactly.
 - Q. That is correct, is it not? A. Yes, sir.
- Q. What is your testimony as to whether the ordinary practice indulged in was to weigh a round of tubs instead of a tub at random?
 - A. Well, as I said, sometimes we weighed one,

(Testimony of Arnold H. Freund.)
sometimes two in succession, sometimes three and
sometimes four

- Q. Did you weigh a random tub as often as you would weigh a round of tubs, or would you weigh a round of tubs more frequently than you would weigh a random tub?
- A. I guess I weighed about evenly; I have taken a round as often as I have taken it at random. It is entirely according to conditions.
- Q. How long would it take to weigh a round of four tubs, where the tubs had to be weighed on the platform scales? A. 3 or 4 minutes.
- Q. You say 3 or 4 minutes to weigh a round of tubs? A. Yes, I should judge so.
 - Q. Did it require as much as 15 minutes?
- A. No, I cannot say, unless it has been at times when the barge has a bad list, an inshore list, so that they cannot get the scale—they have to pull the tub out from the center of the hatch clear to the edge of the scale and if the barge listed inshore they could not pull it in, it would be hard work for them to get it over.
- Q. Upon occasions when you would notify the hatch-tender that you wanted to weigh a round of tubs and a round of tubs would be weighed by you what, if anything, did you observe the shovellers down in the hold of the barge doing with reference [1032—973] to the quantity of coal which would be contained in the tubs which you would be called upon to weigh?
 - A. Well, on a few occasions I have caught them

heaping the tubs and I would refuse to weigh them. As a rule I have called them down pretty hard and threatened them that I would ring up Mr. Mills or somebody and get a gang of men who would do as they were told; as a rule they gave me pretty good weight.

- Q. Did you ever compel them to remove coal from the tubs? A. Yes, sir.
 - Q. Was that a frequent occurrence?
- A. No. As a rule I would let the tub go up but refused to weigh it.
- Q. Was it a frequent occurrence that additional coal would be placed on the tubs that they expected you to weigh?

Mr. McCUTCHEN.—That is calling for the operation of the mind of some man whom we don't know.

Mr. ROCHE.—I will withdraw the question.

- Q. How often after you would call for weights, would this additional quantity of coal be placed in the tubs?
- A. Well, as a rule when I called for a weight I watched them pretty close, that they did not do it. If they didn't see me near the hatch, I wouldn't know whether they did or not. I have caught them once or twice.
- Q. How often when you came to weigh tubs of coal would you notice that the tubs contained more coal than they should have contained, and you would direct the tubs to go up and you would not weigh them; how often did that occur?

A. I could not tell you; very often.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred: [1033—974]

Q. Do you recall an occasion when you weighed a barge out short? A. I do.

Q. When was that?

A. I have forgotten the date of it; sometime in 1908, I believe.

Q. Were you watching the tubs very closely on that occasion? A. I was.

Q. You say you were watching the tubs very closely? A. Yes, sir.

Q. What, if anything, occurred after you had completed weighing out that barge; when did you next get an assignment to weigh drawback coal?

A. Sometime after.

Q. How much time elapsed, if you can recall?

Mr. McCUTCHEN.—We object to that. What is the inference to be drawn from that?

Mr. ROCHE.—We have a right, may it please the Court, in a case such as this, to show what the facts are, to show what the situation was upon this particular occasion and to ascertain when he was next called upon to act as an assistant weigher in weighing drawback coal.

Mr. McCUTCHEN.—It is intended that an inference of some improper conduct on our part shall be drawn from that, and I submit that it is unfair and that no such inference is properly deducible.

The COURT.—The objection is overruled. [1034—975]

Mr. McCUTCHEN.—We note an exception.

A. I don't know, but some few months as far as I can recollect. It was quite a while; I don't recollect the date of it but I know I didn't get down there for some time after.

I recall an occasion when there was some trouble with a link connecting two of the cars on the Folsom Street bunker. That occurred, I think, around 1906, but I don't recollect whether it was before or after the fire. It was close to that time. I do not recall the particular ship that was then being discharged.

- Q. I want you to go on and state in your own way what that transaction was.
- A. Well, there are four cars worked up there and they are weighed two at a time; they are all linked together, one motor-car. I was weighing, and I think at that time Mr. Delaney was clerk for the Western Fuel Company. Having weighed the first two cars of a train, I think the weight went in the neighborhood of something like 17,500 and as they pulled off and they weighed the second two, I saw that the cars were heavily laden and I thought that there must have been something wrong with the weight, so I insisted on the motorman bringing those cars back and reweighing them.
- Q. How did you happen to look at the cars on that occasion?
 - A. You can't help it; here is the run-off and they

(Testimony of Arnold H. Freund.)
come out right underneath the scale-house. (Indicating.)

- Q. (Indicating.) And you did, upon that occasion observe that the two cars which you weighed were pretty well laden with coal?
- A. Yes, and I had the motorman back up his [1035—976] cars, and I reweighed them, and where they first weighed something short of 18,000, the next weight was about 25,500.
 - Q. The same two cars?
- A. The same two cars exactly. I could not understand it. They have a little 'phone in the house there connected with their office down below, and I rung up Mr. Miller, and I said "Billie, will you ring up the custom-house and have Mr. Wooster come down"; he said, "What is the matter?" I said, "There is something wrong, I am getting the worst of it up here, have Wooster come down." So Mr. Wooster came down with Mr. Jim Smith and Mr. Mills and came up and I told them and they couldn't seem to understand how it could be. I went down below with them and Mr. Delaney done the weighing upstairs.
- Q. Before you proceed with your statement let me ask you this: The motor and the train of cars are headed as it comes upon the scales in a westerly direction? A. Yes, sir.
- Q. And you ran the first two cars upon the scales; is that correct? A. Yes, sir.
 - Q. And took the first weight? A. Yes, sir.
 - Q. Then you ran the rear two cars upon the scales

(Testimony of Arnold H. Freund.) and weighed those two cars? A. Yes, sir.

- Q. Then, as I understand it, you required the cars to be pushed backward, that is, in an easterly direction, and you again weighed in that way the first two cars? A. I did.
- Q. After Mr. Wooster, the defendant, James B. Smith, and Mr. Mills reached the scene of activities, state what occurred.

A. They came up and they looked it over and could not understand it, and finally I believe they rang up and got the Fairbanks Scale man down, and Mr. Wooster told me to keep ahead, go ahead and weigh so as not to dely the game; and in the meantime [1036—977] he went on the scale and he found the scale was perfect; then we discovered that there was a short link between the second and the third cars that when the first two got on the short link in some way held the cars up a little on the scale in order to make a difference of somewhere around 2,000 lbs.

I believe this link was shorter than the links between the other cars. I examined the link myself. I should imagine it had been in service some time. I don't think it was a new link, but I didn't notice particularly. I cannot describe the link in any way. I did not notice any peculiarity about it. Mr. Mills or Mr. Smith, I don't recollect which, immediately ordered that a longer link be put in. I have no idea how long that particular link had been used. I had been weighing that train of cars right along for some time. I have weighed those cars over one scale and then tried them over the north scale. I used to test

the scales that way. I cannot say I did that with this particular train, however. I do not remember. I could not give the length of that link. So far as I can remember, it might have been six inches. The thickness might have been somewhere about three-fourths or seven-eights of an inch.

(There was no cross-examination of this witness.)

[Testimony of Albert E. Aitken, for the Government.]

ALBERT E. AITKEN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now live and have lived for a number of years in San Francisco. I am not employed just now, but I have been a ship's [1037—978] clerk for over forty years. In that capacity I would look after the interests of the ship owners in the discharge of the cargo. I have acted in that connection at this port of San Francisco very frequently. It was somewhere about the time of the earthquake that I last acted as a ship's clerk in connection with the discharge of imported coal by the Western Fuel Company. I think it was just a little before the earthquake. I remember the circumstance of the Western Fuel Company being the successors of the Rosenfeld Company, and, if that was two years before the fire, I must have acted as ship's clerk upon ships being discharged by the Western Fuel Company then. Those boats were mostly discharged at Mission No. 2. I am acquainted with the defend(Testimony of Albert E. Aitken.)

ant, Eddie Mayer. I remember him well during the two years before the fire. In the performance of my duties I would be located right in the scales-house. I would frequently take walks along the stringer, however. The bunkers were open on top most of the time until I made a complaint about them. I noticed on such occasions as I walked down the stringer, if the coal cars were overloaded, the coal would naturally spill off the top and go down in the bunkers below. That occurred whenever I had to work there. Sometimes it would take several days to discharge a ship. They would discharge from two to three hundred tons a day, or, if they worked more hatches, seven or eight hundred.

Q. Now, how often during the discharge of a boat, and while you would be working as ship's clerk during the two years to which you have referred, and referring exclusively, of course, to the activities of the Western Fuel Company discharging these boats, would you see the cars overflowing, and the coal falling down [1038—979] into the pockets below?

A. Every time a tub was dumped, or they wanted to fill the car, you know, some coal would spill over the side, or roll off the top.

Q. Would the same quantity of coal roll off each time, or would there be sometimes a less amount and other times a greater amount?

A. Sometimes there would only be one or two little pieces, and other times there would be perhaps a bucketful.

Q. How often do you think you saw that, Mr. Aitken?

(Testimony of Albert E. Aitken.)

- A. I saw that almost daily when I was working there.
- Q. Were complaints made by you to officials of the Western Fuel Company?
- A. No, I made a complaint to the chief weigher—yes, excuse me, I think that I did complain to the clerk that was weighing the coal at the time.
 - Q. Were those complaints made many times?
 - A. Yes, frequently.

Cross-examination by Mr. MOORE.

I acted as a ship's clerk for about 40 years, and sometimes I would see coal down there at Folsom Street falling off the cars into the bunkers below when there was too much coal running out of the chutes. I complained to the United States Weigher about it and then they fixed temporary planks to put under the hoppers while the ships were being discharged. That was at the Mission Street dock. When the cars thus overflowed, it was because of too much coal coming out of the hopper by reason of a lump getting caught in the chute.

[Testimony of William J. Delaney, for the Government.]

WILLIAM J. DELANEY, a witness called for the United States and sworn, testified as follows:—
[1039—980]

Direct Examination by Mr. ROCHE.

I live now, and have lived for two and one-half years, in Oakland, and I am at the present time Deputy Collector of Internal Revenues, having been (Testimony of Albert E. Aitken.)

in the revenue service for about five years. From 1903 to 1905 I was assistant weigher of customs and weighed coal along with other general merchandise. My station in this weighing for the most part would be on the Mission Street and the Folsom Street docks. In 1905 I worked for the Western Fuel Company for a total time, I think, of about 30 days, but not consecutively. I was checking weights for the Western Fuel Company in the scales-house where the coal was being weighed by the custom weigher. The scaleshouse at Mission Street, as I recall, was located in the center of the bunkers. I do not have any knowledge of any coal being discharged into the bunkers without being weighed. Most of the time that I was checker for the Western Fuel Company I was employed upon the Folsom Street dock. I recall an incident which occurred at the Folsom Street bunkers while I was employed there, when there was some claim made that inaccurate weights were being taken. The assistant weigher at that time was Mr. Freund. Some one or other of us noticed that the scale wasn't weighing properly. There was something wrong with the way the scale was registering so we took steps to have the scales fixed. Mechanics from the Fairbanks-Morse people came down, accompanied by Mr. Wooster, the chief weigher, and we knocked off work until the scales were put in order. There was nothing more particularly the matter with the scales than that one of them did not weigh properly.

I acted as assistant weigher for the Government

(Testimony of William J. Delaney.)

[1040—981] Folsom Street dock at various times from 1903 to April, 1905. Whether in 1905 itself I acted as weigher or assistant weigher upon the Folsom Street dock, except when employed by the Western Fuel Company or by some ship owner, I cannot say. After I left the Government service in 1905, I was not again employed by the Government until 1907 when I went into the Internal Revenue Department. Then I had nothing to do with the docks. I never acted as a ship's clerk on the Folsom Street dock except for the Western Fuel Company. I remember acting as a ship's clerk for a boat owned by George W. McNear, but that was at Mission Street dock.

During the time when I was acting as checker for the Western Fuel Company at Folsom Street, I had occasion to observe the manner in which cars were loaded with coal. Occasionally it would happen that a car would be overloaded and some of the coal would fall off into the bunkers below.

The occasion when I worked for Mr. McNear in the discharge of a ship at the Mission Street dock was after the earthquake and before I entered the Internal Revenue Service. I do not remember the name of the ship. What occurred on that occasion was this: I had quite an altercation with the representative of the Western Fuel Company about the manner in which the coal was being weighed on the deck of the ship on small scales. The coal was placed upon the scales in tubs.

Q. You say it was all weighed in tubs on scales;

(Testimony of William J. Delaney.)

state what, if anything, you observed with reference to the discharge of that ship while you were acting as ship's clerk?

A. Well, I noticed that when a tub was called for by the United States weigher, that oftentimes it did not seem to be [1041—982] representative of the total amount of coal that was being discharged, and I had an altercation with Mr. Mayer, the clerk for the Western Fuel Company about his going into the hold of the ship.

- Q. Do you remember how long it took to discharge that ship?
 - A. Well, about three days, I think.
- Q. How frequently did you notice that the tubs which were weighed by the customs weigher did not represent the average tub that was hoisted?
- A. Well, it did not happen very often because I did not permit it to happen.
 - Q. You say you did not permit it to happen?
 - A. No, I did not.
- Q. What trouble did you have over the quantity of coal that was contained in these tubs?

Mr. McCUTCHEN.—I object to that as immaterial, irrelevant and incompetent. The witness has stated what his observation was. What his trouble was has nothing to do with this case.

The COURT.—Not unless it was some matter called to the attention of these defendants, and something said in connection therewith by these defendants.

Mr. ROCHE.—It would seem to us it would be

(Testimony of William J. Delaney.)

admissible for this reason, if your Honor please. The witness has stated that it did not occur very often because he did not permit it to occur. We desire to ascertain what did occur, which called for this action on his part.

Mr. McCUTCHEN.—He has already testified to that.

The COURT.—He has testified in a general way, yes; the objection is overruled.

Mr. McCUTCHEN.—An exception. [1042—983]

A. Well, I objected to Mayer going to the hold of the ship for the reason that I did not think—

Mr. McCUTCHEN.—We object to the witness' reason, your Honor.

The COURT.—Yes, the objection is sustained.

Mr. ROCHE.—Q. Let me ask you the specific question, Mr. Delaney; you remember the tubs that were hoisted for the purpose of being weighed, do you not?

- A. Yes, sir.
- Q. Now, to what extent were the tubs which were hoisted for the purpose of being weighed filled with coal?
- A. Well, sometimes they were not representative of the total number of tubs hoisted.
- Q. What do you mean by not representative of the total number of tubs hoisted?
- A. Well, the tub that was weighed would sometimes not weigh as heavy as the general average.
- Q. How frequently did that occur? How frequently did it occur that tubs were brought up for the purpose of being weighed which did not contain

(Testimony of William J. Delaney.)

as much coal as was contained in the average tub?

A. Well, this happened several times until we had a big row about it, and then it stopped. I could not say the number of times that that happened.

Cross-examination by Mr. McCUTCHEN.

I could not be positive, but I rather think that the name of the ship was the "Germanicus" on the occasion that I have mentioned when there was trouble with the scales on the Folsom Street dock during the discharge of a vessel. [1043—984]

[Testimony of J. L. Bley, for the Government.]

J. L. BLEY, a witness called for the United States and sworn, testified as follows:—

Direct Examination by Mr. ROCHE.

I now live, and have lived practically all my life, in San Francisco. For 27 years I have been and now am a custom-house broker and a member of the firm of C. D. Bunker & Company. I recall a ship known as the "Dumbardon." I recall in a hazy sort of way the discharge of a cargo of coal from her during the latter part of 1905. I remember making a statement to Mr. Sullivan and Mr. Roche about these facts, some months ago. There were several vessels whose names were similar to that of the "Dumbardon," and I cannot precisely identify the ship being discharged on this particular occasion. Our firm did not represent the captain of the ship.

Q. Do you recall during the latter part of 1905 making an examination of any portion of the scales located upon the Folsom Street dock under the con-

trol of the Western Fuel Company?

- A. I visited the scale; it was late in the summer or early in the fall.
 - Q. You remember the circumstance?
- A. Yes, I remember the circumstance that you are referring to.
- Q. Have you any recollection as to whether that occurred in the year 1905 or not?
 - A. Yes, I would say 1905.
- Q. At whose request or for what purpose did you visit the scales at that time?
- A. I am not certain whether it was at the request of J. J. Moore [1044—985] & Company or H. M. Newhall & Company.
- Mr. ROCHE.—Q. Was J. J. Moore & Company the consignee of that vessel, of the cargo of that vessel?
- A. I don't think so; I think they were acting as agents.

Mr. ROCHE.—Q. You say you did make an examination of the scales at that time?

A. Well, I would not call it an examination, Mr. Roche, because I had never visited the waterfront practically on a mission of that kind before; I looked at them; I was only there about 15 minutes. I saw the scales, yes, if that is what you want to know, yes, I saw the scales.

- Q. Was anybody with you at the time?
- A. Yes, sir, the chief weigher.

- Q. Upon how many occasions did you visit the scales?
 - A. I visited the scales once on this occasion.
- Q. And did you again visit the scales upon a later occasion?
- A. No, I did not visit the scales; I visited the bunkers.
- Q. Upon this particular occasion you say that the chief weigher was with you; are you referring to Mr. Wooster?
 - A. He was the chief weigher at the time.
- Q. What part of the scales did you examine or did you look at, to use your language?
- A. Well, it was that portion of the scales where the small cars ran over.
- Q. You say that portion of the scales that the cars went over; do you mean the platform?
 - A. The platform-scale, yes, sir.
- Q. Did you examine the surface of the platform, or did you go underneath the platform?
- A. If my memory serves me I examined both; as you call it, I examined both the surface and [1045—986] a portion of the underneath part.
- Q. How did you gain access to that portion of the scales located immediately underneath the platform?
- A. I don't know whether they were open on account of some repairs or whether they had been opened; that was eight years ago.
- Q. You are acquainted, are you not, with most of the defendants in this case? A. No, sir, I am not.
 - Q. Do you know Mr. Smith?

- A. I have met Mr. Smith, yes.
- Q. Just go on and state what you observed after entering the space which is located immediately below the platform of the scales?
- A. Mr. Roche if I could refresh my memory up a bit I might be able to tell you more about that. It was eight years ago, and it was only a 15 or 20 minute transaction, and I have been through thousands of them—I don't mean similar transactions, but thousands of other transactions, and in practically every part of the world.
- Q. What do you mean, Mr. Bley, to refresh your recollection from what?
 - A. From a drawing of the scales.
- Q. You say you did go into this space which was located below the platform of the scales on the Folsom Street dock; you recall that, do you not?
 - A. I recall that, yes, sir.
- Q. Do you recall observing any uprights located underneath the platform scales? A. Yes.
 - Q. You are certain about that, are you?
- A. Well, I am certain—I remember there were uprights there; I remember that. [1046—987]
- Q. Do you recall making an examination of that portion of the scales for the purpose of ascertaining whether the platform of the scales would come in contact with any one of these uprights or with anything underneath the platform? A. I did.
 - Q. Now, just go on and tell the jury what you saw?
 - A. Well, I don't like to make a definite statement

because it is eight years ago and there might be some little detail I might not be correct in. To the best of my knowledge and belief there was one of the uprights that appeared to have had the platform resting upon it.

- Q. Do you recall examining the remaining three uprights? A. No, I do not.
- Q. Is your recollection to-day the same as it was at the time you made a statement to Mr. Sullivan and to myself? A. It is the same.
 - Q. You don't think there is any difference in it?
 - A. No, no difference.
- Q. Let me ask you, haven't you a recollection of examining the tops of the other three uprights underneath these scales for the purpose of ascertaining, if I may refresh your recollection, whether there was any dust upon the tops of these other uprights, or not?
- A. It is my impression that there was one of them on the same side that showed that the scale had touched it that had dust on it. That is my impression.
- Q. But it did show that the scale had come in contact with it?
 - A. On the upright I saw the dust on?
 - Q. Yes.
- A. No, I don't think the scale came in contact with that one; it came in contact with the one I just called your attention to. I remember that there was one of them that the scale came in contact with. [1047—988]

- Q. Have you any recollection at this time as to how many uprights there were located under this platform? Do you remember there being an upright at each one of the corners of the platform?
 - A. My impression is there were four.
- Q. Now, eliminating from consideration the particular upright with which you say the platform came in contact, do you recall the space which you observed existed between the remaining three uprights and the platform of the scales? How many inches above the tops of those other three uprights was the platform? Haven't you any recollection upon that subject at all?
- A. Why, it is very hazy as to the distance between the platform and the top of the upright.
- Q. I am not talking now about the particular upright that you say the scale came in contact with, but I am talking about the remaining three uprights. Do you now recall the space which existed between the tops of the other three uprights and the platform? A. I do not.
- Q. Do you recall whether you examined the tops of these three uprights for the purpose of ascertaining whether any part of the platform of the scales had come in contact with any one of those uprights?
- A. My impression is that after looking at the other upright on the same side as the one that had been touched by the platform above the one that was out of order, or whatever it was, that I did not examine anything further, and I called the weigher's attention to it.

Q. Had the top of the upright which apparently had come in contact with the platform of the scales been worn down to any extent, and if so, to what extent? [1048—989]

A. Well, it was to some extent; I cannot recall to what extent it was worn down, but it was to some extent; that is, it was visible to the naked eye that the platform had rested on it.

(Witness continuing.) The upright that I examined had apparently been worn down at a recent date. I remember the chief weigher contended that it must be of recent origin but my contention at the time, if I remember correctly, was that it might have been for some period past.

Q. Do you recall whether the upper part of this upright was removed?

A. Mr. Roche, I will have to state that all I know about that is what was told me by Mr. Wooster.

Q. Do you recall whether the block which you did see at a subsequent date corresponded with the upper portion of the upright as you observed it while under the scales?

A. The block that was shown me by Mr. Wooster corresponded with that portion of the upright.

Mr. ROCHE.—Q. Where was the block at the time it was shown to you by Mr. Wooster, if you recall?

A. It was probably at the custom-house.

Q. Your recollection is not very definite upon that subject, that is, as to the exact place? A. No.

- Q. Do you recall whether there was any dust of any kind upon any part of the top of this upright which apparently had come in contact with the scales?
 - A. I believe there was.
- Q. Do you recall the dimensions of the upright? I don't mean so far as height is concerned, but the width and the thickness of it.
 - A. My impression is it was 6 by 6.
- Q. Are you at all certain, Mr. Bley, that there was any dust of any kind upon the top of this upright, which apparently had come in contact with the scales?
- Mr. McCUTCHEN.—I object to that, if your Honor please. The witness was asked what his impression was and he stated it and I submit that counsel has no right to cross-examine his own witness in that fashion. [1049—990]

A. I believe there was.

Mr. ROCHE.—Q. What I am trying to get at, Mr. Bley, is, is that a definite recollection?

A. No, sir, I could not state definitely.

(There was no cross-examination of this witness.)

(The entry made by the American Schooner "Americano" which was the subject matter of some testimony given by witnesses John W. Smith and Enlow was here introduced in evidence as U. S. Exhibit No. 150. Counsel for the prosecution directed the attention of counsel for defendants to the fact that a shortage appears of about 32 tons, the con-

(Testimony of Michael J. Costello.) sumption entry showing the cargo to be 1291 tons bituminous coal, valued at \$3369.08, and that the ascertained or out-turn weight was 1259½ tons.)

[Testimony of Michael J. Costello, for the Government (Recalled).]

MICHAEL J. COSTELLO, a witness recalled for the United States, testified as follows:

Direct Examination by Mr. ROCHE.

I have already been examined as a witness in this case. I am familiar with the contents of U.S. Exhibit No. 125, Table C. Since that exhibit was introduced in evidence, I have made comparison between the items in the exhibit and the entries in the books kept by the defendant Mills, and have likewise traced back every item contained in each one of said books and compared those items with the entries contained in U.S. Exhibit 125, Table C. The number of barge loads actually shown by Table C, if I remember correctly, is 486. In tracing back the entries appearing in Exhibit "C" and comparing them with the books of defendant Mills, I discovered certain inaccuracies, [1050-991] namely, 20 out of 486 barge clearances. The paper which is now shown me is a table compiled by me after making the examination to which I have just testified. It accurately, correctly and truly sets forth the aforesaid inaccuracies existing in Table C. There were six entries in the books of the defendant Mills which I could not explain and which I could not understand. They were clerical errors. The statement now shown

me and entitled, "A satisfactory check cannot be had on the following items owing to irregularities in barge books" comprises the six items to which I have just referred. (Counsel for the prosecution here read said last-mentioned statement in evidence as follows: "Exhibit 'C," page 18, Date April 16, 1907, barge 'Melrose," page 30, May 16, 1908, barge 'Melrose'; page 30, June 1, 1908, barge 'Nanaimo'; page 46, January 5, 1910, barge 'Ruth'; page 62, June 7, 1911, barge 'Theobold'; page 63, July 17, barge 'Comanche.'")

With the exception of the above six items, the table to which my attention was first directed correctly sets forth all the discrepancies existing between U. S. Exhibit 125, Table C and the books of the defendant Mills.

- Q. The figures shown in Exhibit "C" are given in the barge book under the date of discharge or clearance; is that correct?
 - A. The date of final clearance of the barge.
- Q. Now, without going over each item contained in the dock book, or diaries kept by the defendant, Mills, and comparing these items with the items contained in Table C, did you make a calculation for the purpose of determining the additional coal that was checked in the barges referred to in Exhibit "C," and [1051—992] which quantity of coal is not contained in Exhibit "C"? A. I did.
- Q. Does Exhibit "C" correctly set forth all coal checked out of or discharged from the barges?
 - A. The same discrepancy occurs in the discharge

(Testimony of Michael J. Costello.) as in the receipt, in Exhibit "C."

- Q. How do you mean the same discrepancy occurs in the discharge as in the receipts?
- A. The same amount of coal was dropped on each side, on the receipt and delivery side, so that the overage, the number of tons overage, is not affected.
- Q. That is, there would be the same overage, except you would have to add to the quantity of coal checked in, the amount of discrepancy and likewise add the same quantity to the amount of coal checked out? A. That is it.
- Q. So that the only figures that are affected would be the receipts, the quantity of coal checked out and the percentage of overages. Is that correct?
 - A. That is correct.
- Q. I would like to have you take this statement and testify to the exact tonnage of coal checked into the barges.
 - A. You mean altogether, the entire Exhibit "C"?
 - Q. Altogether? A. 595,492 tons.
- Q. What was the quantity of coal which had been eliminated from the figures set forth in Table C?
 - A. 31,732 tons, 1618 pounds.
- Q. The figures which you gave us just a moment ago, in response to a question put by me to you, asking you to state the total quantity of coal checked into these barges, contains the figures which you have just given us. Is that not true? A. Yes.
- Q. In other words, that was the total quantity of coal? [1052—993]
 - A. That is the correct total, including the excess.

- Q. What was the quantity of coal as shown by Exhibit "C" to have been discharged from the barges? A. 596,982 tons, 1266 pounds.
- Q. Now, add to that figure the excess coal which, in fact, was discharged from those barges as shown to you upon comparing the figures contained in Table C with the figures contained in these dock books; what is the total quantity of coal discharged from these barges during the period of time covered by that exhibit? A. 628,713 tons, 644 pounds.
- Q. Making an overage of how many tons and pounds? A. 33,223 tons, 542 pounds.
- Q. That was the quantity of coal which according to the book kept by the defendant, Mills, was discharged out of the barge, or out of the barges, in excess of the amount shown by his books to have been checked in or discharged into the barges: Is that correct? A. Yes.
- Q. Will you let me have that table for a moment, please. Do you recall the percentage of overage as that percentage was shown by Exhibit "C"?
 - A. Yes, it was 5.89 per cent.
 - Q. 5.89 per cent? A. Yes.
- Q. Now, did you calculate the percentage of overage upon the figures ascertained by you to be correct?
 - A. Yes.
- Q. That is after taking into consideration the discrepancies to which you have already testified, and including the additional coal which was checked into these barges, as well as the additional coal checked out of the barges? A. Yes.

Q. What is the percentage of overage, considering all of the coal shown by the books kept by the defendant, Mills, to have been checked into the barges, as well as all of the coal shown [1053—994] by those books to have been checked out of the barges?

A. 5.57.

Q. 5.57 per cent? A. Yes.

Q. What is the difference between those two percentages? A. .32 per cent.

Q. .32 of one per cent: Is that correct?

A. Yes, that is correct.

Q. That is the difference in percentage as shown by the figures not found to be correct? A. Yes.

Mr. ROCHE.—I suppose, Mr. McCutchen, that we might offer this in evidence, instead of having this witness testify to these figures herein set forth. Is that all right?

Mr. McCutchen.—That is all right.

Mr. ROCHE.—We offer this in evidence as U. S. Exhibit No. 151, and it may be considered as having been read. Is that correct, Mr. McCutchen?

Mr. McCUTCHEN.-Yes.

(U. S. Exhibit 151 is in words and figures as follows:) [1054—995]

20

...486

22

[U. S. Exhibit No. 151—Table Showing Discrepancies in Barge Books—List of Items of Exhibit "C."]

o h	Total number of Barge loads	shown in Exhibit "C"	Number of the above showing	incorrect receipts and		s Total receipts as shown in "Ex-		hibit C"563759		12 Overage 33223 542		33 Percentage of overage5.89		90	68	31		I	excess as shown herew	S.	337321618		595492	32 Overage 53223 542		17 Percentage of overage5.	18 Total deliveries as shown in "Ex-
1000	DOOL ess	ceipts	Over	Show	bit "C	Lbs	597	2146	116	842	1903	2083	428	95	189	63	510	664	1656	1555	1223	145	513	992	1452	817	1618
IT "C" N BARGE BOOKS.	Excess	of Receipts	O	Amount Shown	in Exhibit "C."	Tons.	2073	1324	2535	1726	977	801	1306	1717	1760	1545	1007	906	2039	1463	2907	1757	1357	1875	1969	629	31732
LIST OF ITEMS OF EXHIBIT "C"	DISCREPANCIES OCCUR IN			Total	Deliveries	Lbs.	1067	790	919	79	4	1731			1665	405	128	887	2118	1833	1713	977	1562	629	86	582	59
MS OF	O REIO			L	Deliv	Tons.	3917	1915	3778	3101	2455	2722	3505	3637	2618	2626	1779	1647	3468	2411	3785	3002	2952	3605	4390	1381	58702
OF ITE	KEFAN			Total	Receipts.	Lbs.	560	630	1580	1350	1840	066	1120	70	1430	1090	1600	344	1269	737	1820	098	1960	1650	1220	2080	1800
P, .	WHICH DISC				Re	Tons.	3917	1851	3666	3047	2319	2613	3358	3570	2510	2426	1759	1537	3421	2313	3613	2483	2821	3411	4333	1314	56292
	N N					Вагов	Nanaimo	Ludlow	Comanche	Theobald	Nanaimo	Melrose	Comanche	Nanaimo	Comanche	Melrose	Ludlow	Comanche	Melrose	Nanaimo	Melrose	Comanche	Theobald	Comanche	Theobald	Ruth	
							. 1908	99	"	99	2	93	1909	, ,			, ,						, 1911				Total
						Date.	Aug. 13,	"			., 26,		Fan. 6	Mar. 18					Apr. 6			Dec. 4				Nov. 20,	
				Exhibit	"C"	Page.	32		92	_				39			92						89	,		. 1	

Correct Total Deliveries 628715

Add excess as shown herewith3

I have made an examination of the books kept by the defendant, Mills, for the purpose of determining the quantity of coal stored in the steamer "Algoa" from the "Indra" and the "Thyra." I, myself, examined the same books for the purpose of ascertaining the quantity of coal discharged from the "Algoa" at a later date, and I examined the same books to see into what barges the coal was discharged, and for the purpose of ascertaining whether the barges thereafter cleared with an overage or a shortage.

(The attention of the witness was here directed to five sheets of paper.)

These five sheets clearly show, first, the quantity of coal shown by the books to have been discharged into the "Algoa" [1056—997] and the quantity of coal checked out of the "Algoa" and the overages and shortages appearing upon the barges at the time of their clearance. I did not, in making this statement, take into consideration the fact, if it be a fact, that any part of the cargo was used for fuel purposes upon the "Algoa," nor did I assume that any part of the cargo was left on board.

Mr. ROCHE.— * * * According to this calculation, there was laden upon the "Algoa" from the steamship "Indra," 6248 tons, 652 pounds, and from the steamship "Thyra," 2,170 pounds, 1461 pounds; making a total of 8,416 tons, 2113 pounds. At the time of the discharge of the "Algoa," there was 8,535 tons, 657 pounds checked into the barges, creating an overage of 116 tons, 784 pounds, that is, there was

116 tons, 784 pounds more coal checked out of the "Algoa" than there was apparently discharged into her. You will concede that that does not include the 50 tons which Powers testified were transferred to the bunkers, nor any of the screenings or coal left on board?

Mr. MOORE.—Just put it in, and we will meet it when we come to our case.

Mr. ROCHE.—All right. Now, the calculation also shows that there was laden upon the barge "Melrose" on July 22, 1908, from the "Algoa" 316 tons, 779 pounds, making a total, with other coal deposited upon this barge, of 2,832 tons, 991 pounds; that this coal was subsequently discharged into the "Man-"Nippon Maru," "Mongolia" and churia." "Korea," and that the weight of the coal as discharged into these four boats amounted to 2,966 tons, 379 pounds, or an overage of 133 tons, 1628 pounds; that on October 12, 1908, there had been discharged into the "Melrose" from the "Algoa," 227 tons, 1392 pounds, this with other coal [1057 998] which had been discharged on the "Melrose" amounting to 2,985 tons, 1,582 pounds. This barge coaled the "Hong Kong Maru," "Mongolia" "Crook" and "American Maru," and according to this calculation the quantity of coal checked or discharged into these four vessels amounted to 3,005 tons, 1805 pounds, or an overage of 20 tons, 223 pounds. In April, 1909, there was discharged into the barge "Melrose" from the "Algoa" 1014 tons, 1335 pounds, and no more coal-that is, there was no coal taken upon the "Mel-

rose" from any other boat. That coal was subsequently discharged into the "Asia," the out-turn weight being 1031 tons, 1864 pounds, or an overage of 17 tons, 529 pounds. On June 3, 1909, there had been discharged into the barge "Melrose" from the "Algoa" 1042 tons, 1125 pounds, and 705 tons, 1170 pounds, making a total of 1748 tons, 55 pounds, no coal having been, according to these figures, discharged into the "Melrose" excepting this coal from the "Algoa." This coal was discharged into the "City of Para," "Peru," "Newport," "Nippon Maru," and "Pennsylvania." The out-turn weight of this coal was 1854 tons, 864 pounds, an overage of 106 tons, 809 pounds. July 2, 1909, there was deposited in the barge "Theobold," from the "Algoa," 1078 tons, 475 pounds, 924 tons, 972 pounds, 906 tons, 297 pounds, making a total of 2908 tons, 1744 pounds; according to these figures, no coal, excepting the coal from the "Algoa" was laden upon the barge. This coal was discharged into the "Nippon Maru," "China," "City of Sydney" and "Asia"; the outturn weight was 2971 tons, 876 pounds, or an overage of 62 tons, 1372 pounds. On August 14, 1909, there had been discharged into the barge "Melrose" from the "Algoa" 880 tons, 1950 pounds; from the "Algoa," account of "Thyra," 1080 tons, 416 pounds, and on account of the "Thyra" 583 tons, [1058-**999**] 550 pounds, making a total of 2544 tons, 1641 pounds, no other coal having been discharged into the barge, according to these figures. This coal was discharged into the "China," "San Juan," "Asia,"

"City of Para," "Nippon Maru" and "Pennsylvania." The out-turn weight was 2556 tons, 462 pounds, or an overage of 11 tons, 106 pounds. On July 6, 1909, there was discharged into the "Rough and Ready" from the "Algoa" 157 tons, 1486 pounds; this coal was checked into the "Asia" and the out-turn weight was 158 tons, 144 pounds, or an overage of 899 pounds. On July 3, 1909, there was discharged into the schooner "Shasta" from the "Algoa" 201 tons, 495 pounds. This coal was subsequently discharged into the "City of Sydney" and "Asia," the out-turn weight being 201 tons, 461 pounds, or a shortage of 34 pounds.

Now, the total output of barges loaded wholly or in part from the steamship "Algoa" was as follows: "Melrose" 2966 tons, 379 pounds; "Melrose," 3005 tons, 1805 pounds; "Melrose," 1031 tons, 1864 pounds; "Melrose" 1854 tons, 864 pounds; "Theobold" 2971 tons, 876 pounds; "Melrose" 2556 tons, 462 pounds; "Rough and Ready" 158 tons, 144 pounds; "Shasta" 201 tons, 861 pounds, or a total of 14,745 tons, 135 pounds. The overages on the above barges, I will not read. The total overage is 351 tons, 2040 pounds, from which there is a deduction of 34 pounds, a shortage, making a total net overage of 351 tons, 2006 pounds. That overage, of course, may be due, as shown by these figures, to some extent, to coal discharged from other vessels into these barges.

(This document concerning the "Algoa" was here introduced in evidence as U. S. Exhibit 152, and is in words and figures as follows:) [1059—1000]

[U. S. Exhibit No. 152.—Total Output of Barges from January 24 to June 29, 1908.]

S. S. "INDRA."

1908.

Jan. 24—Feb. 3—

103,2210 Yard Bunkers

656, 1990 Offshore Bunkers

6248.652 Algoa

7009.372

Short 268, 1868 Tons

S. S. "THYRA"

1908.

Feb. 11—14—

539.1840 Offshore Bunkers

2170.1461 Algoa

883,2100 Melrose

249.1490 Nanaimo

888, 1020 Theobald

151.450 Shasta

60.1390 Pinole

96.

70.120 Thyra

5110.911

Short 69.1329 Tons

"ALGOA"

a/c 'Indra'..... 6248.652

'Thyra'..... 2170.1461

8418.2113

[1060—1001]

1212	James	B.	Smith	et	al.	vs.
	E	X	'ALGO	A	,,	

1908.		
June 3.	Melrose	316.779
Aug. 26.	66	227.1392
1909.		
Apr. 8—10.	"	1014.1335
" 21—24.	46	1042.1125
May 18—21.	Theobald	1078.475
" 21—24.	Melrose	705.1170
June 4—8.	Theobald	924.972
" 9—12	Melrose	880.1915
" 19—23.	Theobald	906.297
" 19 <u>—</u> 30	Melrose	1080.416
" 30	Rough and Ready	157.1486
" 29	Sch. "Shasta"	201.495
		8535,657

Over—116.784

[1061—1002]

1014.1335

								2985.1582				3005.1805			
Welrose	•	227.1392	772.2000	584.710	399.1500	402.1510	21.200	577.990	915.600	410.2096	640.835	1039.534	. 223		Melrose
1908		a/c Algoa	S. N. Castle	Yard	Offshore Bunkers	Beaver Rock Rygha 402.1510	Offshore Bunkers	Titania	Hong Kong Maru	Mongolia	Crook	America Maru	Over-20.223	1909.	Mel
004 19	Oct. 12	a/c	"	"	3	3	33	3							Apr. 20
									2832.991				2966.379		
		316.779	45.2090	718.310	175.1090	354.2230	110.1980	751.830	359.650	581.626	820.831	425.861	1139.301	133,1628	
1908.	Metrose.	a/c Algoa	" Offshore Bunkers	Tordenskjold	Offshore Bunkers	Thor	Offshore Bunkers	Titania	" Tordenskjold	Manchuria	Nippon Maru	Mongolia	Korea	Over	
00	uly 22—	a/c 1	"	99	"	3	3	L ,,	3	-	A	A	1		

		o antos	<i>D</i> .		icon ec	w.	00.		
	2544.1641		2556.462	!					
1909 Aug. 14— Melrose 880.1915 " Algoa ("Tbyra") 1080.416	" Thor 583,1550	China 457.2159 San Juan 334.1875 Asia 287.536 City of Para 371.1855 Nimon Maru 926.2038	Pennsylvania 177.959	Over—11.1061	Rough and I	" Asia 158.144 Over—898 lbs.	July 3, 1909 Sch. "Shasta" a/c Algoa 201,495	lney—129.331 72.130	201.461
1748.55		1854.864			2908.1744		2971.876		
Melrose 1042.1125 705.1170		148.1940 358.1627 217.1643 856.1410 272.964	Over-106.809		Theobald 1078.475 924.972 906.297	1028.1251	243.354 899.853	Over-62,1372	
June 3— a/c Algea		City of Para Peru Newport Nippon Maru Pennsylvania	0		July 2— T	Nippon Maru	City of Sydney Asia	40	

1063-1004

Total Output of Barges Loaded Wholly or in Part from S. S. "Algoa."

	mon N. Migou	**	
			Tons lbs.
July 22, 1908.	Melrose		2966.379
Oct. 12, "	6.6		3005.1805
Apr. 20, 1909.	66		1031.1864
June 3, "	66		1854.864
July, 2, "	Theobald		2971.876
Aug. 14, "	$\mathbf{Melrose}$		2556.462
July 6, "	Rough and Re	eady	158.144
July, 3, "	Shasta		$201.46\tilde{1}$
	Total		14745.135
O	verages on above Ba	arges.	
	<u> </u>	ŗ	Tons Lbs.
July 22, 1908.	Melrose	Over	133.1628
Oct. 12, "	"	6.6	20.223
Apr. 20, 1909	66	6 6	17.529
June 3, "	66	4.4	106.809
July 2, "	Theobald	6 6	62.1372
Aug. 14, "	Melrose	6.6	11.1061
July 6, "	Rough and Read	у "	.898
			351.2040
	Deduct:		
July 3, 1909	Shasta	Short	.34
	Total Net Ove	rage	351.2006
[1064—1005]			

At the time when I was comparing the items contained in U. S. Exhibit 125, Table C, with the items contained in the books kept by defendant, Mills, I likewise compiled a table for showing overages which exceeded nine per cent in the discharge of barges.

(The attention of the witness was here directed to a table consisting of two pages.)

In this table I have indicated a number of items where the percentage of overages upon the clearances of the barge exceeded nine per cent. The first column on the left-hand side labeled "page" refers to the page of U.S. Exhibit 125, Table C. The heading, "Barge," in the next column is the name of the barge. The heading, "Date," in the next column contains under it two dates opposite each barge; the first date which the date on the right indicates the first date on which the barge received any coal from any source after she had been previously emptied, and the second date indicates the date of final discharge or clearance of the barge. The last column, entitled, "Percentage of Overage," gives the percentage based on the actual overages as compared with the total amount of coal received into the barge.

(The document was here introduced in evidence as U. S. Exhibit 153, and is in words and figures as follows:) [1065—1006]

[U.S. Exhibit No. 153.—Table Showing Percentage of Overages.]

Ŧ	Page, Barge.	Date. Pe	ercentage
1	age, Darge.		Average.
2	"Theobald"	Jan. 17–31, 1906	9.4
2	"Nanaimo"	Feb. 3–10, "	32.5
7	"Ludlow"	May 3–22, "	9.5
9	"Theobald"	June 29–July 6, 1906	12.2
9	"Ruth"	July 11–21, 1906	15.6
11	"	Aug. 30–Sept. 14, 1906	10.
16	66	Jan. 29–Feb. 3, 1907	13.
21	"Ludlow"	May 13–29 "	20.
21	"Nanaimo"	June 24–July 6, "	21.
23	"Melrose"	July 31-Aug. 7, "	21.
23	"Theobald"	Aug. 19–27 "	16.
26	"Comanche"	Nov. 7–20 "	14.
24	"Theobald"	Sept. 5–24 "	10.
28	66	Feb. 13–18, 1908	$16\frac{2}{3}$
28	"Melrose"	" 11–22, "	18.5
28	4.6	" 24–29, "	10.5
30	"Comanche"	May 16–21 "	23.5
31	"Ludlow"	June 27–July 16, 1908	24.
35	"Theobald"	Oct. 5–19, 1908	14.
37	"Melrose"	Nov. 11-Dec. 30, 1908	9.6
38	4.6	Jan. 4–15, 1909	11.
39	"Ruth"	Dec. $1/08$ -Feb. $25, 1909$	11.
39	"Theobald"	Feb. 13-Mar. 10, 1909	11.5
45	"Comanche"	Oct. 22–29, 1909	16.6
45	"Theobald"	Nov. 13–Dec. 2, 1909—	11.8
45	"Nanaimo"	Dec. 7–27, 1909	9.
46	"Theobald"	" 31/09–Jan. 31, 191	0 9.8
[10	66—1007]		

P	Page. Barge.	Date. Pe	ercentage
		$\circ \mathbf{f}$	Average.
47	"Theobald"	Jan. 5–15, 1910	12.9
47	"Melrose"	" 15–19, "	10.3
47	"Nanaimo"	" 21–23, "	10.
47	"Ruth"	" 21–23, "	26.
47	66	" 25–28, "	11.8
49	66	Feb. 7-Mar. 23, 1910	11.9
49	"Melrose"	Mar. 16–29, 1910	12.9
50	"Nanaimo"	Apr. 4–May 4, 1910	10.
50	"Comanche"	" 19- " 5, 1910	11.5
50	"Theobald"	" 9- " 19, 1910	10.
52	"Melrose"	July 7–22, 1910	20.6
53	"Comanche"	Aug. 2- 9, 1910	12.4
54	"	Sept. 12–15, 1910	31.
55	"Theobald"	Oct. 20–31, "	14.
56	44	Nov. 10–22, "	10.
58	66	Dec. 9-11, "	42.6
59	"Comanche"	Jan. 17–21, 1911	13.4
60	6.6	Feb. 17-Mar. 11, 1911	14.
60	"Theobald"	Mar. 21-Apr. 8, 1911	10.
62	"Nanaimo"	June 12–30, 1911	13.
65	"Melrose"	Sept. 18–27, 1911	19.4
66	"Comanche"	" 28-Oct. 11, 1911	13.7
67	"Melrose"	Nov. 4–Dec. 4, 1911	17.
67	66	Dec. 6–12, 1911	14.
68	"Nanaimo"	" 8–17, 1911	15.8
73	"Theobald"	May 23–25, 1912	40.
73	"Melrose"	June 4–18, 1912	12.7
75	"Nanaimo"	Sept. 17-Oct. 9, 1912	11.7
73	"Wellington"	May 23–27, 1912	11.)
Γ10	067—1008]		

Mr. ROCHE.—I would like to read part of this. I want to call the jury's attention to the names of some of these barges, and some of the dates.

Barge "Theobold," January 17 to January 31, 1906, percentage of overage, 9.4 per cent. Barge "Nanaimo," February 3 to 10, being 8 days, percentage of overage, 32.5 per cent; barge [1068—1009] "Ludlow, May 3 to 22, percentage of overage, 9.5 per cent; barge "Theobold," June 29 to July 6, 1906, 12.2 per cent; barge "Ruth," July 11 to 21, 15.6 per cent; same barge, August 30 to September 14, 10 per cent; same barge, January 29 to February 3, 1907, being six days, 13 per cent; barge "Ludlow," May 13 to 29, 20 per cent; barge "Nanaimo," June 24 to July 6, 21 per cent; barge "Melrose," July 31 to August 7, 21 per cent; barge "Theobold," August 19 to 27, 16 per cent; barge "Comanche," November 7 to 20, 14 per cent; barge "Theobold," September 5 to 24, 10 per cent; barge 'Theobold,' February 13 to 18, 1908, 162/2 per cent; barge "Melrose," February 11 to 22, 18.5 per cent; same barge, February 24 to 29, 10.5 per cent; barge "Comanche," May 16 to 21, 6 days, 23.5 per cent; barge "Ludlow," June 27 to July 16, 24 per cent; barge "Theobold," October 5 to 19, 14 per cent; barge "Melrose," November 11 to December 30, 9.6 per cent; same barge, January 4 to 15, 11 per cent; that is 1909; barge "Ruth," December 1, 1908, to February 25, 1909, 11 per cent; barge "Theobold," February 13 to March 10, 11.5 per cent; barge "Comanche," October 22 to 29, 16.6 per cent; barge "Theobold," November 13, to December 2, 11.8 per cent:

barge "Nanaimo," December 7 to 27, 9 per cent; barge "Theobold," December 31, 1909, to January 31, 1910, 9.8 per cent; barge "Theobold," January 5 to 15, 1910, 12.9 per cent; barge "Melrose," January 15 to 19, 10.3 per cent; barge "Nanaimo," January 21 to 23, 10 per cent; barge "Ruth," January 21 to 23, 4 days, 26 per cent; same barge, January 25 to 28, 11.8 per cent; same barge, February 7 to March 23, 11.9 per cent; barge "Melrose," March 16 to 29, 12.9 per cent; barge "Nanaimo," April 4 to May 4, 10 per cent; barge "Comanche," April 19 to May 5, 11.5 per cent; barge "Theobold," April 9 to May 19, 10 per cent: barge "Melrose," July 7 to 22, 20.6 per cent: [1069—1010] barge "Comanche," August 2 to 9, 12.4 per cent; September 12 to 15, 31 per cent; barge "Theobold," October 20, to 31, 14 per cent; same barge, November 10 to November 22, 10 per cent; same barge, December 9 to December 11, a period of three days, 42.6 per cent; barge "Comanche," January 17 to 21, 1911, 13.4 per cent; same barge, February 17 to March 11, 14 per cent; barge "Theobold," March 21 to April 8, 10 per cent; barge "Nanaimo," June 12 to 30, 13 per cent; barge "Melrose," September 18 to 27, 19.4 per cent; barge "Comanche," September 28 to October 11, 13.7 per cent; barge "Melrose," November 4 to December 4, 17 per cent; same barge, December 6 to 12, 14 per cent; barge "Nanaimo," December 8 to December 17, 15.8 per cent; barge "Theobold," May 23 to May 25, three days, 1912, 40 per cent; barge "Melrose," June 4 to 18, 12.7 per cent; barge "Nanaimo," September (Testimony of Michael J. Costello.)
17 to October 9, 11.7 per cent; barge "Wellington,"
May 23 to May 27, 11 per cent.

Cross-examination by Mr. McCUTCHEN.

Mr. McCUTCHEN.—Do we understand that this exhibit No. 151—I show it to you so that you may know what 151 is—represents the total deliveries of coal to barges, and the total deliveries from barges in excess of the receipts by barges and deliveries from barges as shown on Exhibit "C"? A. Yes.

- Q. That is to say that exhibit is intended to show the total deliveries to barges and the total deliveries from barges? A. Yes.
- Q. And the total deliveries to barges, according to that exhibit, is what?
 - A. 595,492 tons, 102 pounds. [1070—1011]
 - Q. And the total deliveries from barges is what?
 - A. 628,715 tons, 644 pounds.
- Q. Now, I understand you to testify that this exhibit which you hold in your hand, taken with Exhibit "C," shows the total deliveries to barges, according to the Mills' books. A. Yes.
- Q. And the total deliveries from barges according to the Mills' books? A. Yes.
- Q. Now, will you tell the jury how much time you have spent on this matter since Exhibit "C" was offered in evidence here?
- A. Why, I did not take any note of the time; I guess it took about a week.
 - Q. About a week? A. Probably.
- Q. And do we understand you to say that the total which you have there, of—give me those figures

(Testimony of Michael J. Costello.) again? A. 595,492 tons, 102 pounds.

- Q. Is the total shown by the Mills' books as received into the barges?
 - A. The calculation made from the Mills' books.
 - Q. You are certain that is correct? A. Yes.
- Q. It seems useless to put the question to you, but I will put it: Do you state that the total deliveries to barges as shown by the Mills' books during the period purported to be covered by Exhibit "C" does not exceed 700,000 tons? A. Yes.
 - Q. You do state that? A. Yes.
 - Q. You are positive of that? A. Yes.
 - Q. Have you the Mills' diaries here?
 - A. Yes, I believe they are in Court.
- Q. Will you turn to the diary for January, 1908, before you do that, let me ask you this question; Do we understand that these two exhibits, taken together, show the deliveries of all [1071—1012] coal to the barges, whether that coal was subsequently delivered to drawback steamers, or to other purchasers?

A. Yes.

Q. Now, then, will you let us see whether in that Exhibit 151 you have included, if you have included, the deliveries to and the deliveries from the barge "Nanaimo," beginning in January, 1908?

Mr. ROCHE.—What was the date of clearance?

Mr. McCUTCHEN.—Q. According to the memorandum which I have, Mr. Costello, you began receiving coal on the 15th day of January and was discharged on the 18th of March?

A. I will have to correct that statement; I have

recalled to mind that in going over these books I have found many instances where the barges were omitted from the exhibit and were not included in the exhibit.

- Q. Then you cannot tell the jury now, even after all this time you have spent in this matter, the total deliveries in tons to the barges and the total deliveries in tons from the barges?
- A. I did not take note of those that were omitted from the exhibit "C."
- Q. How, then, can you give the jury the correct percentage of the overages?
- A. The percent of overages is based on the deliveries in the exhibit.
- Q. You are an accountant, are you not, Mr. Costello? A. Yes.
- Q. And is that the way you would get at the percentage of overages if you were going to get at it correctly?
- A. Yes, sir. The figures are correct so far as the figures in the exhibit are concerned.
- Q. Supposing you discounted entirely all the coal delivered [1072—1013] to the barges and had simply taken into consideration the overage, what percentage would you have gotten then; that is to say, if you had discarded all of the deliveries we will say in excess of 10,000 tons, and all of the deliveries in excess of 10,000 tons, plus the 33,000, that would not make any difference in the actual overage in tons, would it? A. No, sir.
- Q. Would it have made any difference in the percentage of overage?

- A. It would have made a difference, yes.
- Q. Don't you know as an accountant that in order to get at the correct percentage of overage you must take the total number of tons delivered to the barges and the total number of tons delivered by the barges?
- A. In figuring the percentage, my percentage does not take in those items that were missed from Exhibit "C."
- Q. Let me have that "Exhibit 151" again, please. Are you quite correct about that now, that this "Exhibit 151" does not deal with any of the omissions from Exhibit "C"?
- A. No, sir; that does not deal with any of the omissions from Exhibit "C"; all those items are included in Exhibit "C."
- Q. And are these totals all included in the totals of Exhibit "C"?
- A. No, those totals are given there—the totals which are given there are the correct totals which are obtained by adding the excess which was omitted to the totals which were shown in the original exhibit.
- Q. Then this really has not thrown very much light on the subject, has it?
- A. It has raised the amount of coal received into the barges and delivered from the barges to the extent of some—what is the figure? Thirty-one thousand, is it not? [1073—1014]
- Q. But still it has not raised it according to your statement so as to show what was in fact delivered to the barges and delivered from the barges.
 - A. There are still many items that were missed.

- Q. You say many items? A. Yes.
- Q. And you are not prepared to say that those additional items will not increase the aggregate by at least 100,000 tons, are you?
- A. No, I don't believe they would. Of course, I could not give you any definite figure on that.
- Q. What does this percentage represent that you have given?
- A. It is the percentage of overage based on the receipts as shown on that exhibit.
- Q. But that does not state the percentage accurately, does it, if it does not take into consideration the total deliveries to the barges?
- A. Neither does it take into consideration the total overage.
- Q. And for that reason the percentage is inaccurate, is it not?
- A. The percentage is accurate in so far as the items that are included *is* concerned.
 - Q. What is it intended to show?
- A. The percentage of overage in the amount of coal shown to have been received.
- Q. Shown to have been received by the Mills' books? A. By the barges.
 - Q. I say by the Mills' books?
- A. As I said before, there are many items in the Mills' books that are not included there as they were missed in making up the original exhibit.
- Q. Then let me ask you again, Mr. Costello, what is it a percentage of?
 - A. It is a percentage of the amount of coal that we

had noted in Exhibit "C," plus the excess which I have noted in that "Exhibit 151." [1074—1015]

- Q. Then in order to get at the correct percentage of overage you would still be compelled to take into consideration the other items, would you not?
 - A. I don't think so.
 - Q. Do you mean that, Mr. Costello?
- A. If I took the other items which were meant I will also have to take the overage on those items.
- Q. Of course you would; and is not that the only way you could get at the percentage of overage with anything like accuracy?
- A. I have no reason to believe it would change the result any.
- Q. Well, let us see. Just assume for a moment that you are 100,000 tons out of the way with reference to deliveries to the barges and that you are 100,000 tons out of the way with reference to deliveries from the barges, would that make any difference in percentage? A. Well, if I had—
- Q. (Intg.) Answer the question yes or no, and then make your explanation. I do not want to cut you off from your right to explain. Now, I ask you that question as an accountant.

Mr. ROCHE.—That will be conceded.

Mr. McCUTCHEN.—Counsel says that he will concede that although the witness seems to have some trouble about conceding it.

Mr. ROCHE.—There is not any question about it.

Mr. McCUTCHEN.—Of course there is no question about it.

- A. Yes, sir; it would if no other overage were taken into consideration. Of course, it would, but when you take into consideration the fact that that 100,000 tons would in itself show an overage—
- Q. (Intg.) Oh, they would show an overage you think if the excess is 100,000 tons?
- A. Undoubtedly they would [1075—1016] show a proportionate overage.
- Q. Well, what does Exhibit "C" show aided by "Exhibit 151"; what do they show together?
 - A. I have not got the figures here.
- Q. I am not asking you to state the exhibit; I don't want the detail of the figures; I just want to know what they accomplish taken together.
- A. They are incomplete record of the total receipts and deliveries from the barges from the 1st of January, 1906, to December 31, 1912; I say they are incomplete because a number of items were omitted in making up the original exhibit.

The COURT.—Q. What is the 31,000 tons you added to Exhibit "C"? Where did you get those? What do those represent?

A. Those were amounts that were not carried over by Mr. Mills to the final discharge of the barge and so were lost track of because in making up the exhibit we took the figure, of course, shown by Mr. Mills, that is, the figures shown on the date the barge was cleaned up. But in those twenty instances several hundred tons had been received and delivered and only the balance carried forward; that is, where a barge was partially emptied and loaded again, instead of mak-

ing a clearance or instead of carrying along as he usually did the entire amount of receipts and deliveries right to the end he dropped the receipts and deliveries up to that date and only carried forward the balance that was shown on that date.

Q. Are those the only instances that are found in the books?

A. Those are the only instances, yes, your Honor.

Mr. McCUTCHEN.—Q. Now, turn to January, 1909, and see whether there is not another instance of the same kind—1908. That is the one you turned to a moment ago when you said there were other omissions. [1076—1017]

Mr. ROCHE.—I want to say, if the Court please, in fairness to ourselves, that when we put the witness on the stand we assumed that all inaccuracies of all kinds had been cured, including any possible omissions that had occurred so far as Exhibit "C" was concerned.

Cross-examination by Mr. OLNEY.

Mr. OLNEY.—Q. As I understand you, Mr. Costello, your testimony is that taking into consideration this "Exhibit 151," I think it is, and Exhibit "C," that so far as the items are concerned which appear in Exhibit "C" and which were not omitted from Exhibit "C," that would show the correct amount of overage? A. Yes, sir.

Q. Of some 33,000 tons? A. Yes, 33,223 tons.

Q. And you have gone through these books and have looked for errors in them, and have corrected those that you found? A. Yes, sir.

- Q. And you still have that figure of 33,000 tons?
- A. Yes, sir.
- Q. Have you a statement there of the errors which you discovered in the books?
- A. No, I have not; well, what do you mean? I did not take note of the clerical errors that we were not concerned with. I have a statement of the barge loads in which the entire receipts and deliveries were not taken into account.
- Q. Did you check Mr. Mills' books so that you know that so far as Exhibit "C" goes and so far as "Exhibit 151" goes, that they are a correct statement of overages?
- A. Yes, sir; with the exception of those six items, and, of course, whatever items may have been omitted from the Exhibit "C"; I did not check those. [1077—1018]
 - Q. Let me see these six items.
- A. Those are items I could not check on account of clerical errors and inaccuracies.
- Q. Now, I will ask you to turn to the "Comanche" under date of March 24, 1911, and ask you if you don't find there a balance in the "Comanche" of 543 tons, 1570 lbs.? A. Yes, sir.
- Q. Now, on the next day you find that she has taken on a total of 396 tons, 770 lbs. from the "St. Ronald," do you not? A. Yes, sir.
- Q. Of the 396 tons, 770 lbs., which she has taken on from the "St. Ronald," there are 210 tons, 2090 lbs., included in the previous balance, are there not?
- A. Yes, I presume that is the difference between the figures.

- Q. That would leave in addition to the previous balance of 543 tons, 1,570 lbs., the difference between 396 tons, 770 lbs., and 210 tons, 2,090 lbs., or 185 tons, 920 lbs., would it not? A. Yes, sir.
- Q. In other words, the barge at that time should have been charged with 543 tons, 1,570 lbs., and 185 tons, 920 lbs.? A. I don't follow you.
- Q. You get the balance of 543 tons, 1,570 lbs., do you not? A. Yes.
- Q. In that is included 210 tons, 2,090 lbs., from the "St. Ronald," is there not? A. Yes, sir.
- Q. But when on the next day the "St. Ronald" was through discharging she had put into the "Comanche" 396 tons, 770 lbs.?

 A. Yes, sir.
- Q. Therefore the "Comanche" had on hand in addition to the balance of 543 tons, the difference between 396 tons and 210 tons.
- A. On that day, but I presume you will find [1078—1019] the full amount later on.
- Q. Just a moment; we will come to that later. Is not that correct so far?
 - A. That is correct so far.
- Q. On the 25th the "Comanche" also took on from the offshore bunkers 46 tons, 130 lbs.?
 - A. Yes, sir.
 - Q. And also 88 tons, 760 lbs.? A. Yes, sir.
 - Q. Making a total there of 134 tons, 890 lbs.?
 - A. Yes, sir.
- Q. Now, look under the date of March 30th. You can run right down through the days yourself, Mr. Costello, but I think that you will find that that is

(Testimony of Michael J. Costello.) the next entry, under date of March 30th.

- A. Yes.
- Q. And on that day she took on 101 tons, 2190 lbs.?
- A. Yes, sir.
- Q. And she also took on from the "Henry" 47 tons, 1640 lbs., did she not? A. Yes, sir.

The COURT.—I don't think, Mr. Olney, we will have time to trace this to-night.

Redirect Examination by Mr. ROCHE.

None of the discrepancies or omissions to which I have testified upon cross-examination would in any way affect the individual percentages in the cases of the overages I have given as exceeding nine per cent.

[Testimony of R. Gundersen, for the Government.]

R. GUNDERSEN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I reside in Alameda and for the five years last past have [1079—1020] been working for the Alaska Packers' Association. For three years prior to February 22, 1909, I was first mate on the steamship "Torngenskjold." We took cargoes of coal in that vessel from Nanaimo to San Francisco. When the vessel was loaded at Nanaimo, I know the coal we took aboard was weighed. The cars were weighed as they came along. The scales-house at Nanaimo was about two minutes' walk from the dock. I never saw any carload of coal pass the scales-house and be discharged in my vessel that was

(Testimony of R. Gundersen.)

not weighed. That was the practice that was pursued during the whole three years I was mate on this vessel plying between Nanaimo and San Francisco.

Cross-examination by Mr. McCUTCHEN.

The "Torngenskjold" loaded partly at Northfield on many of her trips. The scales-house at Northfield was just about where the ship was lying. could not swear that all the coal that went into the ship from Northfield went over the scales because I did not keep track of that. The ship was timechartered and it was of no interest to me whether we took aboard 100 tons or 1000 tons. I know that some of the Northfield coal was weighed, but I would not say that all of it was weighed, but my memory is not accurate on that subject. The coal loaded onto the "Torngenskjold" at Northfield was discharged by a conveyor belt into the bunkers, and, also, by a conveyer belt from the bunkers into the ship. I don't know whether it was weighed or not. On some of the trips of the "Torngenskjold" her cargo was taken to San Diego.

Redirect Examination by Mr. ROCHE.

I have no recollection as to how many times my vessel went [1080—1021] to Northfield for the purpose of taking on either a whole or a split cargo of coal. We did not go as often to Northfield as we did to Nanaimo for our cargoes. I think there was a scale at Northfield, but I do not know whether they weighed on it or not.

[Testimony of Andrew Arntzen, for the Government.]

ANDREW ARNTZEN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now reside, and have resided for six years, in San Francisco. I have been for twenty months last past second officer on the ferry boat "Sausalito." From the spring of 1904 until the spring of 1906 I was employed first as third mate and afterwards as second mate on the Steamer "Titania," plying between San Francisco and Nanaimo and Ladysmith, and, occasionally, down to San Diego. I remember our taking on coal at Nanaimo. It was only during the last few months that we took any coal at Northfield, the Northfield Mine not having been opened until that time. Even after that it was only on some of the trips that we went to Northfield for coal. I was in the scales-house at Nanaimo only once. I was supposed to weigh the coal but, of course, the man belonged to the company weighed it and I took the figures. I just looked at the scales. On that occasion all of the cars that were subsequently discharged into my ship passed over the scales. I took the weights as recorded by the scales and gave them to the first officer or the captain in the evening. We took into account the tare of the cars. Whether on other occasions than the one occasion I have mentioned the cars passed over the scales at Nanaimo, I cannot say. It was not my business to make observations in that connection. [1081—1022]

(Testimony of Andrew Arntzen.)

Cross-examination by Mr. McCUTCHEN.

It must have been in the summer or fall of 1905 that the Northfield Mine was opened. It is my best recollection that from that time on we took a part of each cargo from Northfield. It is also my present recollection that we went to San Diego at least three times a year during my service on the "Titania."

[Testimony of Daniel Lauritzen, for the Government.]

DANIEL LAURITZEN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live in Oakland. I am a deckhand. For three years prior to February 25, 1909, I was second mate on the "Torngenskjold" plying between San Francisco and Nanaimo, and, occasionally making a trip to San Diego. The vessel during those three years frequently took on a cargo of coal at Nanaimo, and, quite often, a cargo or part of a cargo at Northfield. I sometimes saw coal being dumped in my boat at Nanaimo and also the operations preliminary thereto. I was at the scales-house twice in the middle of the day. I never took weights myself. Sometimes I saw the cars loaded with coal coming toward the scales-house and subsequently from the scales-house over to the boat. So far as I know, the cars stopped at the scales, but I do not know whether they were in fact weighed. I cannot tell you whether I ever saw any coal being brought to the vessel at Nanaimo which did not come over the scales.

(Testimony of Danel Lauritzen.)

Cross-examination by Mr. McCUTCHEN.

I was down on the ship superintending the disposition of cargo when coal was being laden into the ship. I could not see [1082—1023] the scaleshouse then. It was only very occasionally that I took a trip ashore.

[Testimony of D. C. Norcross, for the Government (Recalled).]

D. C. NORCROSS, a witness recalled for the United States and examined by Mr. Roche, testified as follows:

I have known of R. P. Schwerin as Vice-president and General Manager of the Pacific Mail Steamship Company for a number of years. The Western Fuel Company has an account with him for coal delivered to him. The book which you show me is the transfer ledger of the Western Fuel Company containing the older accounts taken from the current ledger. (The attention of the witness was here directed to an account on page four of said transfer ledger entitled, "R. P. Schwerin, San Mateo." I don't remember ever looking at that account, but it is Mr. Schwerin's account with the Western Fuel Company. The account shows that a certain amount of coal was delivered to R. P. Schwerin and paid for by him. The total amount from September 11, 1907, to March 12, 1910, is \$496 with credits of an equal amount to March 17, 1909. The coal was, according to the ledger, delivered to Mr. Schwerin's home at San Mateo and the account is a personal one. I don't think any money was received from Mr. Schwerin

for that coal. I don't believe he paid a five-cent piece to the Western Fuel Company for any part of that coal. The regular order would come to the office and go as a rule to the defendant, James B. Smith, first. He would give notice to the shipping clerk to have the coal shipped and send a regular order to the wharf. All bills for coal deliveries are placed on Mr. Smith's desk, and, when these Schwerin bills reached him, he would hold them up, and at a later date sometime, go to the Γ1083---1024] bookkeeper and tell him to receipt the bill and make an offset entry for it, charging the amount to operating expenses, so that, as a matter of fact, although our ledger shows Mr. Schwerin did pay for each quantity of coal delivered to him, it would appear that in fact there was not a cent ever paid by him to the company for that coal. The reason for the keeping of the ledger in that way was that we had a regular account with Mr. Schwerin right along and we never changed it. We have a donation account in our ledger. The reason we did not charge these sums to donation is that we did not know this was to be a donation. We would, however, after each one of these bills was receipted by the defendant, James B. Smith, and ordered charged to operating expenses, know in fact that this was to be a donation. I don't know why we did not put these amounts in the donation account. We started in the other way and continued it.

(Another book was here shown to the witness.)
The book now shown me is the current fedger of the

Western Fuel Company running up to 1913. R. P. Schwerin has an account in that ledger, being a continuation of the account in the transfer ledger. The first date on this account is November 16, 1910, and joins onto the last account in the transfer ledger, and runs down to June, 1913. This account shows an amount of \$862 of coal furnished to Mr. Schwerin. Of that amount \$772 are shown by the ledger to have been paid. I don't think that Mr. Schwerin in fact paid a five-cent piece on account of that coal. I think the same procedure was pursued so far as each one of these deliveries of coal is concerned as was pursued regarding the other coal in the other account. The reason the account does not balance is that there [1084-1025] are three items that apparently remain uncredited or unpaid. I don't think the Western Fuel Company furnished to Mr. Schwerin for his personal use any coal, except that specified in these two ledger accounts, during the time covered by said accounts. I cannot tell you why the last three items are not credited off. I do not think a bill was ever sent to Mr. Schwerin for any of this coal. Whatever orders were given in connection with that account were given by Mr. Smith. A bill for this coal sent to Mr. Schwerin's San Mateo home was left on Mr. Smith's desk and no charge would be made against Mr. Schwerin and no bill presented to him and no amounts collected from him because of directions given by the defendant, James B. Smith. The bill itself would be receipted by our cashier, acting under instructions

from Mr. Smith, and then the amount of the bill would be charged up to operating expenses. There is a specific account in our books called "Operating Expenses." The expense of the coal supplied to Mr. Schwerin would be one of the items in that account, but only the bookkeeper could tell what it represented; that is to say, the statement on operating expenses presented to the directors would simply show a total of \$3,000 or \$4,000 without any specific mention of these smaller items. The bookkeeper and James B. Smith, and Mr. Schwerin himself, would be the only persons who would know anything about the fact that R. P. Schwerin did not pay for the coal. A person unfamiliar with the facts, looking at the account of the Western Fuel Company under the title "Operating Expenses," would not be able to ascertain that part of said expenses consisted of furnishing this coal to R. P. Schwerin. The bookkeeper did not keep in his possession a memorandum showing that one of the items in operating expenses [1085-1026] was coal supplied to Mr. Schwerin. All he had down would be the amount when he summarized the totals for the month in disbursements. The name of R. P. Schwerin did not appear among these items; simply the amount would appear. No official of the Western Fuel Company has in his possession to my knowledge a memorandum showing that R. P. Schwerin is the name of the person to whom this coal was delivered.

(The items in the transfer ledger and current ledger, respectively, to which the witness has just testified were here offered in evidence without being marked as exhibits and read into the record as follows:)

"Sheet No. 4. W Name—R. P. Schwerin, San Mateo. Address—1814 Broadway. Date.							Fuel Co.
1917. Fol	io Ck	Charges.	Charges.	1907.	Folio.	Ck.	Credits.
	11	24.	24.	Sept.	13	52	24.
Sept.		20.	24.	Oct.	28	66	20.
Oct.	24		4.0	Oct.			
	28	20.	40.	**	31	68	20.
Nov.	11	32.	32.	Nov.	18	76	32.
				1908.			
Dec.	12	20.	20.	January	7	100	20.
1908.							
January	9	32.	32.	January	1.4	103	32.
February	1	20.	20.	February	6	116	20.
March	5	16.		March	9	133	16.
	20	10.	26.		26	140	10.
April	16	26.	26.	April	20	151	26.
May	19	20.	20.	May	21	165	20.
July	18	20.	20.	July	23	189	20.
Sept.	10	20.00	20.	Sept.	16	211	20.
Oct.	29	56.00	56.00	Nov.	4	234	56.00
Nov.	27	20.00	20.00	Dec.	1	249	20.00
Dec.	23	18.00	18.00	Dec.	31	263	18.00
1910.				1909.			
Jan.	2	36.00		Jan.	6	267	36.00
	4	20.00			8	268	20.00
	29	10.00	66.00	Feb.	2	282	10.00
Mch.	12	56.00	56.00	Mch.	17	10	56.00
		496 "					

[1086-1027]

Name Addre	ss—1814	uel Co. chwerin, Sa Broadway.	ın Mateo.			Si	ieet No. 4
Dat 190		Ck. Charges	charges.	Date.		Folio. Ck	. Credits.
Apl.	7	20.00	20.00	Apl.	12	23	20.00
May	3	10.00	10.	May	6	34	10.00
June	1	1.00	1.	June	18	51	1.
July	2	20.00	20.	July	8	59	20.
Aug.	28	20.00	20.00	Sept.	4	80	20.00
Oct.	15	20.00	20.00	Oct.	20	98	20.00
Nov.	30	20.00	20.00	Dec.	6	119	20.00
Dec.	22	5.00	5.00				
1910	•						
Jan.	10	10.00					
	27	10.00	20.00	Feb.	2	153	25.00
Feb.	17	10.00	20.00	100,	_	100	20.00
100.	21	20.	30.00	Mch.	8	170	30.00
Apr.	7	10.00	10.00	May	3	195	10.00
May	17	10.00	10.00	iday	23	202	10.00
June	14	10.00	10.00		20	202	10.00
July	23	10.00	10.00	July	29	229	20.00
Aug.	20	10.00	10.00	Aug.	31	241	10.00
Sept.	23	20.00	20.00	Sept.	27	251	20.00
"Sheet		20.00	20.00	Sept.	41	Western	
Name-	-R. P. Scl					***************************************	2 402 001
	s—1814 F Folio. Ck.	Broadway, S	S. F. Charges. I	Data		Folio. Ck	Credita
1010.	1 0110. OK.	Charges.	Charges. 1	1910.		1 0110. OR	. Creares.
Nov.	16	30.00	30.00	Nov.	25	297	30.00
2.0	26	20.00	20.00	Dec.	13	287	20.00
Dec.	13	50.00	50.00	Dec.	17	289	20,00
1911.	10	00.00	50.00	1911.	1.	200	
Jan.	12	20.00		Jan.	16	7	20.00
oan.	20	30.00	50.00	9 ап.	25	11	30.00
Feb.				Fah	26	22	20.00
reo.	9	20.00	20.00	Feb.		28	30.00
M.L	28 7	30.00	30.00	Mch.	4		30.00
Mch.	•	30.00		Mch.	14	34 33	20.00
	8 29	20.00 20.00	70.00	Mch. Apr.	13 4	44	20.00
Apr.	12	20.00	20.00	Apr.	21	52	20.00
May	12	2.00	20.00	May	18	63	2.00 .
	23	20.00	22.00		27	66	20.00
June	15	20.00	20.00	June	22	77	20.00
July	21	30.00	30.00	July	28	90	30.
Aug.	31	40.00	40.00	Sept.	20	110	40.00
Nov.	18	30.00	30.00	Nov.	28	140	30.00

Western Name—	R. P. S	chw	erin. oadway. S	2+ C2 TG1			Sh	eet No. 4
Date. 1910.			. Charges		Date. 1912.	Folio.	Ck.	Credits.
	28		20.00	20.00	Dec.	1	143	20.00
					1912.			
Dec.	28		60.00	60.	Jan.	26	171	60.00
1912.								
Jan.	5		20.00	20.00	Feb.	3	175	20.00
Mch.	4		20.00	20.00	Apr.	19	213	20.00
[1087—1	.028]							
				552.00				
Apr. 17		1	20.00	20.00	May 21	230	1	20.00
May 25		2		30.00	June 4	236	2	30.00
July 18		3		30.00				
Sept. 18		3		30.00	Oct. 16	293	3	60.00
Oct. 26		5		60.00				
					1913.			
Nov. 8		4		30.00	Jan. 16	38	4	30.00
1913.								Þ
Jan. 6		5		20.00	Feb. 8	51	5	80.00
								220.
23				20.				
Mch. 21				30.00				
June 18				40.00				
90.00				862.00				

(Counsel for the defendants here admitted, on Mr. Roche's assurance, that such was the fact, that a Mr. Thompson is now, and has been for five years last past, Purchasing Agent for the Pacific Mail Steamship Company.)

I think the Western Fuel Company has supplied Mr. Thompson, the Purchasing Agent of the Pacific Mail Steamship Company, with coal for the last five years gratis. I find two items of deliveries from Oakland, and I understand that some coal was de-

livered to him from this side of which no record was made and for which no charge was made. I do not know, and there would be no way of telling, what quantity of coal was supplied each year by the Western Fuel Company to Thompson. As I understand it, [1088—1029] if he wanted coal he would get it by asking the defendant, Mills. I find no records of such deliveries except those I have just above mentioned. Other than those two items, he evidently did not keep any record thereof. I don't know why the coal supplied to Mr. Thompson is not shown in the donation account. Mr. Mills simply did not report it when delivery was made. To that extent the donation account is not correct.

I also know that Marine Superintendent Chisholm of the Pacific Mail Steamship Company has for the past five years been getting coal from the Western Fuel Company supplied to him by the defendant Mills. I do not know why these deliveries are not listed in the donation account or in the ledger account or in some other account of the Western Fuel Company.

I don't believe I know any of the assistant custom weighers who from time to time have been engaged in weighing coal. I understand there are about 25 of them. I believe that prior to the month of April, 1906, the Western Fuel Company, through its broker, gave to the collector of customs one dollar an hour overtime to be by him paid to the weighers for overtime service. The weighers frequently worked overtime prior to that date. I do not recall

whether or not in April, 1906, or about the middle of the year 1906, the practice of such overtime payment was discontinued, or that the Western Fuel Company received instructions from the collector of customs that said practice would have to be discontinued. I had nothing to do with that. The notice, if such there was, would probably come from the broker into Mr. Smith's office. It frequently occurred I know, after 1906, that boats would be discharged after night, and, also, that barges would have to coal drawback vessels at night. I know that prior to April, 1911, amounts were paid for overtime to [1089—1030] customs weighers, which amounts were taken up on our pay-rolls. When that practice began, I do not know. I understand that that money would be paid to the weighers by the defendant, Mayer, and that he obtained the money from Bud Hopkins, the timekeeper, who in turn would get the money from the cashier in the company's office. I do not know who directed that this money be paid, but I presume that the defendant Mr. James B. Smith, would know about it, or may be the customs broker made the arrangements with the office. No receipt would be taken for this money other than what would be shown on the time-books, and I don't know what is on them. I never saw a receipt signed by any of these weighers for this money, and I do not know of the existence of such a receipt. I don't know whether or not the collector of customs was notified at any time that these men were receiving this money. Whether an assistant weigher

would, after the middle of 1906, be allowed a day off by the Government when he worked overtime, I don't know; I know nothing about that. I never remember seeing the name of any weigher or assistant weigher to whom any of these moneys were paid on any of our books. These moneys were finally charged up to operating expenses. By going through the time-books and pay-rolls it could be ascertained how much money was paid by the Western Fuel Company between April, 1906, and the year 1911 to the assistant custom weighers for overtime. It would take about a day to do that. My remembrance is that prior to 1906 the overtime moneys were paid to our broker and by him paid to the collector of customs so that the latter could remunerate the weighers. I think it is a fact that the collector of customs gave the Western Fuel Company a receipt for that money. I don't recall ever having seen a receipt signed by any Governmental official between the [1090—1031] middle of 1906 and the commencement of 1911, when the regulations were changed, representing a five-cent piece paid to any assistant weigher by the Western Fuel Company, nor have I ever seen any book, memorandum, document, time sheet or any other record kept by the Western Fuel Company during that period of time showing the names of any assistant weighers to whom a five-cent piece was paid by the Western Fuel Company for overtime. I don't recall ever having seen a check issued in the name of any assistant weigher representing overtime.

(The witness here promised to examine the timebooks so as to compile that statement showing the total amounts paid out in overtime to weighers.)

The defendant, Mills, sent a daily report showing overages, whenever one occurred on one of the barges at a cleanup, to the defendant, James B. Smith.

There are not to my knowledge any other accounts in the transfer ledger or current ledges showing payment for coal delivered, which payments were not in fact made.

The stock-book which has been brought here by me, to my knowledge, shows the owners of all the capital stock of the Western Fuel Company. I have a pretty fair knowledge as to who are the actual owners of the stock held in trust by certain stockholders. Very little stock is held in trust by the defendant, James B. Smith; 25 shares, I think. I have compiled and have with me a statement of the stock owned by the defendants in the Western Fuel Company from January 1, 1904, to December 31, 1912.

Q. Just read that into the record.

A. (Reading:)

[1091-1032]

"Stock Held January 1, 1904, April 1, 1906, December 31, 1912.

Name.	Jan. 1,	1904.	Apr.	1, 1906.	Dec. 31	1, 1912.
John L. Howard	163	shares	9	shares	9	shares
James B. Smith	452	shares	1574	shares	1524	shares
James B. Smith, Trustee	1185	shares	75	shares	25	shares
Joseph L. Schmidt	300	shares	460	shares	476	shares
Joseph L. Schmidt, Trustee			88	shares	4341/4	shares
Robert Bruce	20	shares	21	shares	91	shares
Sidney V. Smith	500	shares	1049	shares	$1169\frac{3}{4}$	shares

The Howard Company has now, and has had practically since the beginning of the Western Fuel Company, 2475 shares of the stock. 152 shares stand in the name of Helen L. Howard and represent, I think, one of the original subscriptions.

Cross-examination by Mr. McCUTCHEN.

There were, I think, about 25 to 30 stockholders in the Western Fuel Company when it actively began the business of mining and selling coal. The number continued to be about the same from that time on, but some of it was split up and sold off. I do not think the defendant, John L. Howard, owns any stock in the Howard Company.

I do not mean to be understood as saying that Mr. Schwerin never paid for any coal he ever received from the Western Fuel Company. When deliveries were first made to him and his account was opened and coal was sent to him, I believe he paid those bills. Later on, bills were not sent to him. All bills, and not merely those for Mr. Schwerin, were placed upon Mr. Smith's desk.

- Q. When you were on the stand some days ago, Mr. Norcross, you testified about some statements having been presented to the board [1092—1033] of directors, or having been read at the meetings of the board of directors at times; will you state just what statements you refer to?
- A. The earnings and expense statements, and the general balance sheets, and annual statements.
- Q. With the exception of the annual statements, you do not include in that any of these statements

that have been offered in evidence, do you?

A. No, I do not.

Mr. McCUTCHEN.—Q. So far as you know, with the exception of these annual statements, was any statement presented to the directors, or considered by the directors, in which any reference, whatever, was made to an overage?

A. Yes, there was a statement of that kind, or a mention made of overage in one or two of the annual statements.

Mr. McCUTCHEN.—Q. I say, with the exception of those annual statements which have been offered in evidence?

A. Oh, no, sir.

After 1911, the customs weighers were paid overtime through a broker at the rate, I believe, of one dollar an hour.

Redirect Examination by Mr. ROCHE.

I don't think that the defendant, James B. Smith, instructed the cashier to receipt many bills other than those for Mr. Schwerin for which money was not actually paid. I do not think that Mr. Schwerin has paid the Western Fuel Company for any coal since the earthquake and fire of 1906. [1093—1034]

[Testimony of William S. Miller for the Government.]

WILLIAM S. MILLER, a witness called for the United States and sworn, testified, as follows:

Direct Examination by Mr. ROCHE.

I am now and have been for a number of years employed by the Western Fuel Company. I am a weigher for that company and have been employed in this capacity for 12 years; three or four years of that time in the principal yard of the company at 340 Stewart Street. I use a platform scale there. I know of coal that has been taken out of the yard which has not passed over my scale. That occurs when the coal is hoisted up and taken over the chute. It also occurs when coal is taken out of the yard in carts to be sent to a barge or vessel. Such coal is never weighed. I keep track of it by having one of the yard foremen count the number of loads. I estimate the weight of the coal in the cart and multiply that by the number of carts that go out.

(The direct examination of the witness Miller was concluded at this point. There was no cross-examination.)

Mr. McCutchen at this point admitted that the book here produced by Mr. Roche was the dock-book or diary kept by the defendant, Mills, for the year 1913, and that the handwriting appearing therein, under date of January 10, 1913, was that of the defendant, Mills. Thereupon, the proceedings continued as follows:

Mr. ROCHE.—I desire to offer in evidence simply

the totals appearing under the date of Friday, January 10, 1913, which are admitted to be in the handwriting of the defendant, Mills, and which show the final discharge of the barge "Wellington," which barge was being discharged at the time that Smith and Enlow, or, rather, upon the occasion testified to by the witnesses, Smith and Enlow. It shows that there was discharged into the "Korea" [1094—1035] 974 tons, 448 pounds, and into the "Matilda" 210 tons, 145 pounds, making a total of 1184 tons, 593 pounds; and an overage of 72 tons, 1023 pounds.

Mr. McCUTCHEN.—We will admit that defendant Bruce was first elected a director March 23, 1905, and continued to be a director until April 29, 1909. After that he again became a director on April 6, 1911, and is still a director. Sidney V. Smith was originally elected director December 15, 1902, resigned March 20, 1909, and went back upon the Board June 27, 1912, and has since been a director.

Mr. ROCHE.—Your Honor will recall that a few days ago it was stipulated that certain portions of the minutes should be deemed to have been read in evidence. I think that before we close our case, I ought to direct counsel's attention to the particular dates upon which the meetings were held, part of which minutes we desire to have considered read, so as to perfect the record here.

Mr. McCUTCHEN.—If you would limit the purpose for which you want those minutes in, Mr. Roche, so that we would not be taken by surprise by finding something in them to which our attention has not

(Testimony of William S. Miller.) been called, we might consent that the entire books go in.

Mr. ROCHE.—We don't desire the entire minutebooks to go in, because it would simply encumber the record. It will only take a moment for me to read an extract taken from one of the meetings, and we can assume that only that portion of the proceedings of the other minutes is offered in evidence.

"San Francisco, September 10, 1908.

"Present: John L. Howard, James B. Smith, Joseph L. Schmidt, Robert Bruce and Sidney V. Smith. Statements with balance-sheet showing the results of the company's business to July 31, 1908, were submitted, and on motion of Bruce, seconded by Mr. Sidney V. Smith were accepted and ordered placed on file."

That is the only extract from those minutes, may it please [1095—1036] the Court, of that date, that we desire to offer in evidence.

I will now direct the reporter's attention to the dates upon which these subsequent meetings were held, and only those portions of the minutes showing the directors present, and those portions of the minutes relating to the submission of statements and the action which was taken by the board of directors on those statements are offered in evidence.

Mr. McCUTCHEN.—Just a moment. Mr. Roche, the situation is not complete simply upon the offer of that portion of the minutes. You have not offered any of these balance sheets. They are here; they are here at your disposal, but you have not offered

them up to this time. It does not seem to us, if your Honor please, that it is proper or that it is fair to these defendants, to offer these resolutions without offering the statements to which the resolutions refer. Of themselves, the resolutions do not explain anything. If counsel is to claim hereafter, as I have no doubt he will claim, that these resolutions refer to something else, he ought to develop to what they refer. If he is going to offer the resolutions for the purpose of showing that some statement was read to the directors, or was considered by them, he ought to offer the statements that were read at the same time.

Mr. ROCHE.—The answer to that is this: We do not consider ourselves bound by the testimony given by the witness, Norcross, as to what did, in fact, come up for consideration before the directors. Now, we have offered in evidence monthly statements showing the total quantity of business in tonnage, some of these statements showing tonnage, and other statements showing dollars and cents, which were rendered from time to time in connection with the business of the company. Now we say, may it please the Court, that it is for the jury to determine, from the language used in these minutes, and from the language in which the proceedings [1096—1037] of the board of directors is couched— I say it is for the jury to determine to what statements the language refers, and whether any of the statements which have heretofore been introduced in evidence are statements referred to by the minutes of the

(Testimony of William S. Miller.) meetings of the board of directors.

Mr. McCUTCHEN.—We have the testimony of Mr. Norcross— I don't claim that the prosecution is bound by Mr. Norcross' testimony, but we have the testimony of Mr. Norcross, which up to this stage has not been contradicted, that the statements which have been offered in evidence are not the statements referred to in these minutes. The showing up to this time is that those statements are not before the court. As I say, none of us have any objection to the offer of these minutes, but if the resolution to which counsel has just called attention is to be offered and to be considered by the jury, then counsel ought to do one of two things, he ought either to offer the financial statements, of which he has control, and which are in his possession, or he ought to offer proof that the statements which he has already put in evidence are the statements referred to in these resolutions.

Mr. ROCHE.—It seems to me, may it please the Court, that this is a conclusive answer to the contention of Mr. McCutchen; that we—

The COURT.—How is this matter before the Court? Is there an objection to this resolution?

Mr. ROCHE.—It really is not before the Court at this time.

Mr. McCUTCHEN.—Counsel was offering that, and I was only suggesting that to get the whole matter before the Court, these statements should be offered, and that the record will be incomplete, if the offer of the resolution, itself, is unaccompanied by those statements. [1097—1038]

Mr. ROCHE.—Is there any objection to these minutes going in?

Mr. McCUTCHEN.—I don't think they are material, and I don't think they are complete.

Mr. ROCHE.—We submit that objection.

Mr. DUNNE.—We put the objection on the ground that the offer is without foundation.

The COURT.—The objection is overruled.

Mr. DUNNE.—We take an exception.

Mr. ROCHE.—You will consent, Mr. McCutchen, that I may simply direct the reporter's attention to the particular dates upon which these meetings were held?

Mr. McCUTCHEN.—Oh, yes.

Mr. ROCHE.—Only those portions of the proceedings already indicated by me being offered in evidence.

Mr. McCUTCHEN.—Yes.

Mr. ROCHE.—That is, that part of the minutes showing the directors present, and that portion of the minutes showing the statements presented and the action taken by the board.

September 10, 1908, September 30, 1908, November 4, 1908, December 7, 1908.

February 18, 1909. We desire to offer in evidence, so far as February 18, 1909, is concerned, that portion of the minutes showing the submission of the annual statement which has already been introduced in evidence.

Mr. McCUTCHEN.—Just the portion you have offered.

Mr. ROCHE.—Yes. February 23, 1909, March 10, 1909, March 20, 1909, April 29, 1909, June 7, 1909, July 14, 1909, August 3, 1909, September 27, 1909, December 9, 1909, December 30, 1909.

February 1, 1910, May 18, 1910, June 28, 1910, August 25, [1098—1039] 1910, September 22, 1910, October 27, 1910, November 25, 1910, December 21, 1910.

January 26, 1911, March 24, 1911, July 1, 1911, July 22, 1911, August 29, 1911, September 28, 1911, November 29, 1911, December 26, 1911.

(Counsel for the prosecution here stated that they would have no objection to his Honor permitting Mr. Norcross to be recalled to the stand for further cross-examination by counsel for the defendants, the latter having stated that they wished to recall him in order to ask him what the statements are which are referred to in the minutes just introduced in evidence by counsel for the prosecution. Mr. Olney of counsel for the defendants then stated that he wished to correct a suggestion with reference to a matter to which attention had been called in the Mills Diary for 1912 and the early part of 1913, and the proceedings continued as follows:)

Mr. OLNEY.—If your Honor please, it is with reference to the discharge of the "Theobold," in which case Mr. Roche stated that Mr. Enlow had testified that the barges were going up level.

Mr. ROCHE.—You mean that the tubs were going up level?

Mr. OLNEY.—Yes, that the tubs were going up

level, and that she had overrun only 1403 lbs. That entry appears under the date of Saturday and Sunday, the 21st and the 22d of December, 1912; but the next entry of the "Theobold" which appears in the book is on the 24th, and that entry is, from "Theobold" surplus into the "San Jose" 29 tons, 585 lbs. And then following that there occur during the 3 or 4 days some deliveries into the "Theobold" and out of the "Theobold" but it results finally on the 31st in a total of deliveries into [1099—1040] the "Theobold" of 919 tons, 320 lbs., and a delivery out of the "Theobold" of 1064 tons, 364 lbs., or an average of 145 tons, 44 lbs. That is an average of about 14 per cent.

Mr. ROCHE.—But you will concede, Mr. Olney, that of course there is no way of telling from that book, that is, there is no way of definitely ascertaining from that book that the overage of 145 tons did not result from the coal checked into the barge after the date upon which that surplus is shown. That is correct, is it not?

Mr. OLNEY.—As far as the book is concerned, the book shows exactly what I have stated. It shows an overage of 1400 lbs. on the 21st. It shows on the 24th a surplus of 57; then the next time we come to an overage we find an extremely high overage in the barge.

Mr. ROCHE.—I understand that, but as long as you have explained this to the jury, Mr. Olney, you will concede that there was a quantity of coal discharged into the barge between the date upon which

the surplus was shown and the date upon which the final clearance is shown, and of course you cannot tell nor do the books show that the overage was not caused by the coal discharged into the barge at a time after that overage is shown.

Mr. McCUTCHEN.—That is incorrect, Mr. Roche. Mr. STANLEY MOORE.—The books do show that there was an overage of over 30 tons on the barge when you read it as only 1400 lbs.

Mr. ROCHE.—I don't know to what that surplus refers.

Mr. STANLEY MOORE.—Well, it is very plain.
Mr. ROCHE.—It is admitted, may it please the Court, that in April, 1910, when the steamship "Thor" discharged her cargo at San Diego, there were left in the steamship "Thor," being a [1100—1041] part of the cargo entered at that port, 241 tons, 1030 lbs.; that the coal was retained on board the "Thor" for fuel purposes. The same admission is made respecting the steamship "Thor" for the month of November, 1911, being another month during which she discharged at San Diego. There were left upon the steamship "Thor" 101 tons, 560 lbs. of the cargo which was to be used by the steamship "Thor" for fuel purposes.

The same admission is made respecting the same steamship for the month of December, 1912, there being left upon the steamship at the time she discharged at San Diego, 46 tons, 1290 lbs. of the cargo for fuel purposes.

[Testimony of Edmund M. Atkinson, for the Government.]

EDMUND M. ATKINSON, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I am employed in the office of the special agent of the treasury of the United States Government. I am familiar with Tables "A" and "B" of U. S. Exhibit 125. I have examined Table "A" for the purpose of ascertaining how often the steamship "Wellington" was discharged between January 1, 1905, and December 31, 1912, and I also examined the photographic copies of the diaries or dock-books kept by the defendant, Mills, for the purpose of ascertaining at what port the "Wellington" discharged during the above-specified period of time. I am familiar with those diaries or dock-books.

(Certain typewritten memoranda were here called to the attention of the witness.)

These memoranda were compiled by me. They represent, so far as complete cargoes were concerned, that is, a cargo discharged [1101—1042] wholly either at San Francisco or at Oakland, the discharge of the steamship "Wellington" at these ports, respectively, between January 1, 1905, and December 31, 1912. Where a part of the cargo was discharged at San Francisco or Oakland, I made no note thereof. These memoranda, to the best of my knowledge and belief, correctly, accurately and truly show every time that the "Wellington" discharged a full cargo at either of the ports mentioned between the dates

(Testimony of Edmund M. Atkinson.)

specified. The memoranda also show the difference between the out-turn weight and the bill of lading or invoice weight upon each date of discharge. The third column of the first page of the memorandum designated "Short, tons and pounds," represents a shortage when a shortage occurred between the bill of lading and the out-turn weights, while the last column which is entitled, "Over, tons and pounds," represents the case of an overage when that occurred. The first page of these memoranda shows the occasions when the "Wellington" discharged a full cargo of coal at San Francisco, together with the shortage or overage, as the case might be, while the second page discloses the discharges at Oakland, together with the shortages or overages.

(Said memoranda were here introduced in evidence for the purpose of showing a comparison between the shortage and overage of the "Wellington" during her discharge at Oakland and her discharge at San Francisco, respectively. The memoranda were marked U. S. Exhibit No. 154, and is in words and figures as follows:) [1102—1043]

[U. S. Exhibit No. 154 - Statement Showing Shorts and Overs in Cargoes of Coal During Years 1904-1912.7

STATEMENT SHOWING SHORTS AND OVERS IN COMPLETE CARGOES OF COAL IMPORTED BY THE WESTERN FUEL COMPANY DURING THE YEARS 1904 TO 1912, INCLUSIVE, AS WEIGHED IN ENTIRETY ON SCALES IN SAN FRANCISCO AND OAKLAND, CALIFORNIA; STEAMER WELLINGTON.

A	WEIGHED IN SA				
Arrival, Date of. Vessel.	Entry No.	Shorns.	ort Lbs.	Tons	over Lbs.
1905.				- 3-2	
Jan. 1	25	12	730		
May 28	6557	78	1940		
June 9	7082	66	600		
July 16	8683			19	1900
1907.					
Mar. 31	4854	24	740		
Apr. 22	6090	71	1680		
1909.					
Feb. 5	1911	70	60		
" 24	2668	56	1010		
June 21	8010	44	1270		
Nov. 17	14962	99	930		
Dec. 5	15837	71	380		
1912.					
Feb. 9	2463	201	1800		
" 21	3081	181	1800		
Mar. 10	4229			7	1680
Apr. 4	6028			1	1780
May 12	8181	32	270		
" 22	8853	104	520		
June 17	10298	108	970		
" 29	11002	22	90		
July 11	11822	66	150		
n 55	12398	29	1770		
Ang. Q	13518	6	680		
Oct. 10	17852			70	1210
" 21	19335			18	1530
Nov. 27	21429	1	390		
Dec. 11	22150			24	1560
" 99	23400			7	1900
	Totals	1348	2100	151	360

WEIGHED IN OAKLAND.

Arrival, Da	te		Sho			ver
of. Vessel	l.	Entry No.	Tons.	Lbs.	Tons	Lbs.
Oct. 18	S. F.	13271			55	2040
Nov. 1	Oak.	52			43	10
Dec. 18	44	18			79	1870
1905.						
Jan. 13		3			42	1775
" 28		8			(24	1310
Feb. 13	Oak,	11			(14) 34	$\frac{1800}{40}$
Mar. 11	"	14			(29	870
" 99	44	4.0			(16	90
" 29	••	16			(9 (20	$\frac{1340}{470}$
Apr. 12	46	17			58	1960
May 1	44	21			91	1790
" 13	44	22			62	1920
June 24	**	28 33			$\frac{16}{60}$	$715 \\ 10$
Aug. 18 Sept. 1	44	35			22	2110
" 24	66	39			19	1120
Nov. 7	"	46	0	0.7.0	41	1990
" 22 Dec. 6	66	$\frac{49}{51}$	$\frac{2}{51}$	$\begin{array}{c} 810 \\ 1340 \end{array}$		
" 19	66	54	91	1040	10	1780
1906.						
Jan. 4		1			30	1080
" 22		4			20	920
Feb. 6	Oak.	5 9			6	1630
" 19 Mar. 7	46	12			$\begin{array}{c} 15 \\ 69 \end{array}$	$\frac{1800}{1610}$
" 21	4.6	13			6	1470
Apr. 5	"	17			58	2160
¹ 19	44	20	16	2020	0.2	1000
June 22 July 13	44	$\frac{42}{72}$			23 14	$\begin{array}{c} 1660 \\ 860 \end{array}$
1907.						000
Mar. 2	S. F.	3252	47	570		
Sept.			62	850		
Nov. 9	S. F.	17022	2	10		
Dec.	Oak.	296	36	1080		
1908. Nov.	Oak,	122	66	290		
Dec. 11	S. F.	16678	43	1960		
" 27	Oak.	140	37	990		
1909.						
Mar. 25	Oak.	26			64	800
Sept. 24	44	65	27	2140		
Oct. 11	46	79 95	8	910		
21		95	11	440		
1912. Mar. 22	S. F.	5070			18	490
Apr. 16	S. F.	$\begin{array}{c} 5070 \\ 6582 \end{array}$	1	1250	10	100
June 3	44	9475	34	90		
Sept. 23	4.6	16480			13	1240
		Totals	449	1310	1098	410
[1104	10457	Totals	777	1010	1000	1.0
[1104	1040]					

(Testimony of Edmund M. Atkinson.)

Mr. ROCHE.—I want to direct the attention of the jury to this memorandum. The first page of this exhibit, 154, shows that the steamship "Wellington" discharged at San Francisco upon 27 occasions between the 1st of January, 1905, and the 31st of December, 1912; that upon every occasion that she discharged a full cargo of coal at port San Francisco, with the exception of seven occasions, she discharged short. The greatest amount of shortage appears to have been during her discharge on February 9th, 1912, when she was short 201 tons, 1800 lbs. February 9th, 1912, must have been the date of the final discharge. Upon the seven occasions upon which she discharged over, the total overage is 151 tons, 360 lbs., one overage, being the largest overage, was 70 tons, 1210 lbs. The total shortage during this period of time of discharging at San Francisco amounts to 1348 tons, 2100 lbs.

- Q. I notice that upon the second page of this tabulation you show that the "Wellington" discharged upon three occasions at Oakland between and including October, 1904, and the 1st of January, 1905; you recall that, do you?
 - A. I can vouch for every item there.
- Q. During that three months the "Wellington" did not discharge in San Francisco?
- A. If it is not shown there the "Wellington" did not discharge in San Francisco a full cargo, that is, of the Western Fuel Company's importations.
 - Q. Well, that is what I am talking about, of course.
 - A. Yes.

(Testimony of Edmund M. Atkinson.)

Mr. ROCHE.—The second page of the tabulation shows that commencing on October 18, 1904, the "Wellington" discharged at Oakland 42 times; that the total shortage at Oakland during those 42 times amounts to 449 tons, 1310 lbs.; that during that period of time she discharge over 1098 tons, 410 lbs. The record also shows that in discharging coal, from and including the 18th day of October, 1902, to and including the 7th day of November, 1905, there were 16 discharges, and she discharged over every time, and that during that period of time there was no shortage. [1105—1046]

(The attention of the witness was here directed to a pencil memorandum.)

This is a comparative statement made by me showing shorts and overs discharged on the Steamer "Wellington" on full cargoes where weights were taken on the scales at San Francisco and Oakland, California, years 1904 to 1912, inclusive. It is practically a summary by years of the former statement hereinabove introduced in evidence. It is a correct summary.

(Said document was here introduced in evidence as U. S. Exhibit 155, and is in words and figures as follows:) [1106—1047]

[U. S. Exhibit No. 155-Statement of Shorts and Overs-Discharge of Steamer

COMPARATIVE STATEMENT SHOWING SHORTS AND OVERS, DISCHARGE OF STEAMER WELLINGTON, FULL CARGOES WEIGHED IN ENTIRETY ON SCALES INSAN FRANCISCO AND OAKLAND, CALIFORNIA, YEARS 1904 TO 1912, INCLUSIVE. Wellington 1904-1912.]

	Over:	Lbs.	1680	930	1990			800			1730	410
	Quantity Over:	Tons.	178	576	246			64			31	1098
	Short.	Lbs.	2150	2020	270	1000	1950	0021		6	1340	1310
OAKLAND.	No. of No. of Quantity Short.	r. Tons.	53	16	148	147	47	1		i.	99	449
70	No. of	Over.	က	14	6	0	0	1	0	0	67	29
3 A I S	No. of No. of	Short.	67	1	4	ಣ	က	0	· c	, 6	1	15
15, INCL		Year 1904	1905	1906	1907	1908	1909	1910	1911	1919		
Commo root to tota, inchesive,	Over:	Lbs.	000	1900							200	360
	Quantity Over:	Tons.	ç	fi Fi							131	151
VCISCO.	y Short.	Lbs.	1030		180		1410			1720		2100
SAN FRANCISCO	Cargoes Cargoes	r, Tons.	157		96		341			753		1348
2	Cargoes	Over,	> -	٠ .	> <			0	> (o (9	_
No of	Cargoes	Short.	က	0	63	0	ΣÇ	Ô	0	10		20 '—1048]
	A	1904	1905	1906	1907	1908	1909	1910	1911	1912		[1107—

(Testimony of Edmund M. Atkinson.)

According to this summary, the "Wellington" in 1904 did not discharge at all in San Francisco.

Mr. ROCHE.—She discharged three times in Oakland, and upon none of those three times was she short, but during those three times she discharged 178 tons, 1680 lbs., in excess of the bill of lading or invoice weight. In 1905, at San Francisco, she discharged three times short, the shortage amounting to 157 tons, 1030 lbs.; and upon one occasion she discharged over, the overage being 19 tons, 1900 lbs. In 1905, while discharging at Oakland, she discharged twice short, the shortage being 53 tons, 2150 lbs., and 14 times over, the overage amounting to 576 tons, 930 lbs.

In 1906 she did not discharge at all at San Francisco. During 1906 she discharged 10 times at Oakland, once short, the shortage being 16 tons, 2030 lbs., and over 9 times, the overage being 246 tons, 1990 lbs.

In 1907 she discharged twice in San Francisco, each time short, the shortage amounting to 96 tons, 180 lbs., and in the same year discharged 4 times at Oakland, each time discharged [1108—1049] short, the shortage being 148 tons, 240 lbs.

In 1908 she discharged only in Oakland, discharging there three times, each time short, the total shortage being 147 tons, 1000 lbs.

In 1909 she discharged 5 times in San Francisco, each time short, the shortage aggregating 341 tons, 1410 lbs.

During that same year she discharged 4 times in Oakland, three times short, the shortage amounting (Testimony of Edmund M. Atkinson.)

to 47 tons, 1250 lbs., and once over, the overage amounting to 64 tons, 800 lbs.

In 1910 she did not discharge either at San Francisco or at Oakland.

In 1911 the same situation exists.

In 1912 she discharged 16 times at San Francisco, 10 times short, the shortage being 753 tons, 1720 lbs., and over 6 times, the overage being 131 tons, 700 lbs.

During 1912 she discharged 4 times at Oakland, twice short, the shortage amounting to 35 tons, 1340 lbs.; and twice over, the overage being 31 tons, 1730 lbs.

According to this recapitulation, during these years she discharged 27 times at San Francisco, 20 times short, the shortage totaling 1348 tons, 2100 lbs.; 7 times over, the overage aggregating 151 tons, 360 lbs.

During the same period of time she discharged at Oakland 44 times, 15 times short and 29 times long, the shortage amounting to 449 tons, 1310 lbs., and the overage amounting to 1098 tons, 410 lbs.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1109—1050]

Cross-examination by Mr. McCUTCHEN.

I prepared this tabulation from U. S. Exhibit No. 125, Table "A', and from the Mills' diaries. It corresponds to and agrees with Exhibit "A." We took Exhibit "A" as the basis in almost every instance and verified it wherever possible by the Mills' diaries.

(Testimony of Edmund M. Atkinson.)

(Counsel for the prosecution here consented that the cross-examination of this witness might be suspended for the present so as to give counsel for the defendants an opportunity to examine the tabulation prepared by the witness and then recall him for later cross-examination.)

Thereupon, the following proceedings occurred:

Mr. ROCHE.—At our request, Mr. Norcross has furnished us with some of the daily sheets prepared by the defendant Mills and sent by him to the defendant James B. Smith; and the daily statements which I hold in my hand commence with July 2d, 1910, and end with July 19, 1910. Will you admit that similar daily statements were furnished by the defendant Mills to the defendant James B. Smith from the 1st of January, 1904, until and including the 31st day of December, 1912?

Mr. McCUTCHEN.—I think the only admission we would be warranted in making on our information is that statements of this nature were sent to the office and that they are the statements referred to by Mr.Norcross when he states that they were put on Mr. Smith's desk.

Mr. ROCHE.—Then we offer these statements in evidence, may it please the Court.

You will admit that these statements are practically copies [1110—1051] of the books of the defendant Mills?

Mr. McCUTCHEN.—As a matter of fact, I have never seen them, but upon your suggestion that they are we make that admission, subject to correction, (Testimony of Edmund M. Atkinson.) however, hereafter.

Mr. ROCHE.—Very well. And also that all of the overages or shortages which appear in the books of the defendant Mills—

Mr. McCUTCHEN.—Pardon me a moment. Mr. Olney suggests that they show the results of the books rather than being copies of the books.

Mr. STANLEY MOORE.—And they have been testified to here and the evidence is in the record with respect to them.

Mr. ROCHE.—Will you also admit that they show the shortages and the overages as they occurred upon the cleanup of the barges?

Mr. McCUTCHEN.—I think that is correct.

Mr. ROCHE.—And also the shortages and the overages which appear in the books of the defendant Mills in so far as the discharge of vessels is concerned in which coal was imported into San Francisco?

Mr. McCUTCHEN.—Yes, I think that is true.

Mr. ROCHE.—And it is stipulated that these may be considered read in evidence?

Mr. McCUTCHEN.—Yes.

(Said daily statements for said period July 2, 1910, to July 19, 1910, inclusive, were here introduced in evidence as U. S. Exhibit 156, and are in words and figures as follows, to wit:) [1111—1052]

[U. S. Exhibit No. 156—Daily Statements July 2 to July 19, 1910, Inclusive.]

WESTERN FUEL CO.

_		
	Tons.	Lbs. 610
	939	
	780	1180
	855	1780

Report for July 2d, 1910.

Ex '	'Leelanaw'	" Comax Offshore Bunkers	533	610
66	do	"Nanaimo"	780	1180
66	do	"Comanche"	855	1780
"	do	"Ruth"	483	1460
	S	hort 169-1690/2240 Tons	2653	550
Ex '	'Melrose"	Jap Offshore Bunkers		
		Wellg "		
66	do t	to Str "City of Para"	100	1614
66	do '	" "Siberia"	574	766
66	do '	" "Newport"	393	536
66	do '	" "Peru"	340	1403
			1408	2079

WESTERN FUEL CO.

Report for July	5th, 1910.
Ton	s. Lbs.
Ex "Melrose" Jap Offshore Bunkers 119	00 1860
Wellg " " 6	1730
Ja p " " 25	9 1990
151	4 1100
" do to Str "City of Para" 10	0 1640
" do " "Siberia" 57	4 766
" do " "Newport" 39	3 536
" do " "Peru" 45	2 540
Over 6-142/2240 Tons 152	0 1242
Ex "Comanche" Comax "Leelanaw"	٠
do to Str "Manchuria" 27	0 190
[1112—1053]	

WESTERN FUEL CO.

				- 0	Report	for	July, 6th, Tons.	1910. Lbs.
Ex	"Comanche"	Comax	"Leelanaw"				Tons.	LIUB.
"	do	to Str.	"Manchuria"				615	159

WER	PEDA	FUEL	CO

		Report	for	July 7th, Tons.	1910. Lbs.
Ex	"Jethon" Wellg. Wharf Bunkers			49	1680
66	do "Melrose"			224	590
				274	30
Ex	"Ruth" Comax "Leelanaw"				
66	do to Str "Manchuria"			110	670
Ex	"Nanaimo" Coxax "Leelanaw"				
66	do to Str "Manchuria"			166	922
Ex	"Comanche" Comax "Leelanaw"				
66	do to Str "Manchuria"			734	495

WESTERN FUEL CO.

Report for July 8th,	19	10.
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		Tons.	Lbs.
Ex	"Jethon" Wellg Wharf Bunkers	1218	1540
66	do "Melrose"	252	1580
		1471	880
Ex	"Nanaimo" Comax "Leelanaw"		
66	do to Str "Manchuria"	449	338
Γ11	13—10547		

WESTERN FUEL CO.

		Report	for	July	9th,	1910.
				To	ns.	Lbs.
Ex	"Jethon" Wellg. Wharf Bunkers			24	40	1850
44	do "Yard"				96	210
66	do "Melrose"			4	66	1761
				30	U3	1581
Ev	"M F Plant" Coop Day Vard D					
	"M. F. Plant" Coos Bay Yard B.			4	03	430
Ex	"Comanche" Comax "Leelanaw"			8	55	1780
46					_	
••	do to Str "Manchuria"			7	34	495
46	do " "Prince George"			1	26	195
					_	
	Over 4-1150/2240 Tons			8	60	690
Ex	"Ruth" Comax "Leelanaw"			4	83	1460
66	do to Str. "Manchuria"				20	654
	do to Str. Manenuria			υ	20	094
	Over 36-1434/2240 Tons					
Ex	"Nanaimo" Comax "Leelanaw"					
66	do to Str. "Manchuria"			4	99	338

WESTERN FUEL CO.

Report for July 11th, 1910).
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					- 0 411		20201
					To	ons.	Lbs.
"Jethon"	Wellg	$\mathbf{W}\mathbf{harf}$	Bunkers		33	364	960
do	66	Yard	"		2	292	1220
do	"	"Melro	se"			667	601
do	66	"Coma	nche"			36	50
					4	360	591
"Nanaim	o" Com	ax "Lee	lanaw"				
do	to S	Str "Mai	nchuria			449	338
do	"Ch	iyo Mar	u"			162	420
14—1055]					611	758
	do do do "Nanaim do do	do " do " do " "Nanaimo" Com do to 8	do "Yard do "Melro do "Coma "Nanaimo" Comax "Lee do to Str "Man do "Chiyo Mar	do "Melrose" do "Comanche" "Nanaimo" Comax "Leelanaw" do to Str "Manchuria do "Chiyo Maru"	"Jethon" Wellg Wharf Bunkers do "Yard " do "Melrose" do "Comanche" "Nanaimo" Comax "Leelanaw" do to Str "Manchuria do "Chiyo Maru"	"Nanaimo" Comax "Leelanaw" do "Chiyo Maru"	do "Yard 292 do "Melrose" 667 do "Comanche" 36 4360 4360 "Nanaimo" Comax "Leelanaw" 449 do to Str "Manchuria 449 do "Chiyo Maru" 162 611 611

WESTERN FUEL CO.

Report for July 12th, 1910.

			neport	for July	12th, 1	910.
					Tons.	Lbs.
Ex	"Jethon"	Wellg Wharf Bunkers			3386	440
66	do	" Yard "			509	1500
46	do	" Offshore "			91	190
44	do	"Melrose"			667	601
66	do	"Comanche"			665	470
					5319	961
Ex	"Nanaim	o" Comax "Leelanaw"			780	1180
46	do	to Str. "Manchuria"			449	338
44	do	" "Chiyo Maru	"		345	1876
Ex	"Melrose	Over 14-1034/224	10 Tons		794	2214
66	do	to Str. "San Jose"			303	1528

WESTERN FUEL CO.

Repor	t for	July	13,	1910.
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	Tons.	Lbs.
Ex "Melrose" Wellg "Jethon"		
" do to Str. "San Jose"	353	1640

The United States of America. 1271

WESTERN FUEL CO

	WESTERN FUE	L CO.	_	
		Report for Ju	uly 14th,	1910.
			Tons.	Lbs.
Ex	"Nanaimo" Comax Surplus			
66	do to Str. "Pennsylvania"		107	560
Ex	"Melrose" Wellg "Jethon"			
44	do to Str. "San Jose"		353	1640
66	do "" "Pennsylvania"		30	100
			383	1740
ĹII	15—1056]	T 00		
	WESTERN FUE			
		Report for Ju		
-			Tons.	Lbs.
	"Jethon" Wellg Wharf Bunkers		3386	440
66	do "Yard"		509	1500
66	do " Offshore "		91	190
66	do "Melrose"		667	601
66	do "Comanche"		665	470
66	do "Howard's Bunkers		1397	2130
	Short 153-1389/2240		6717	851
Ex	"Comanche" Scgs Offshore Bunkers			
	Wellg "Jethon"			
66	do to Str. "Admiral Daperre"		100	170
	WESTERN FUE	L CO		
		Report for Jul	v 16th.	1910.
			Tons.	Lbs.
Ex	"Comanche" Segs. Offshore Bunkers			
	Wellg " "			
66	do to Str. "Admiral Daperre"		200	1190
Ex	"Melrose" Wellg "Jethon"			
66	do to Str. "San Jose"		353	1640
44	do "" "Pennsylvania"	1	370	1760
			724	1160
	WESTERN FUEL		121	1100
	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	Report for Ju	l v 18+h 1	010
		report for su	Tons.	Lbs.
	Segs. Offshore Bunkers		20110.	200.
Ex	"Comanche" Wellg "Jethon"			
46	do to Str. "Admiral Daperre"		200	1190
66	do "" "Asia"		392	798
[111	16—1057]		592	1988

WESTERN FUEL CO.

	Report for July 19th,	1910.
	Tons.	Lbs.
Ex "M. F. Plant" Coos Bay		
" do to Yard Bunkers	187	1500
Ex "Comanche" Scgs. Offshore Bunke	ers	
Wellg "Jethon"		
" do to Str. "Admiral Dap	eree" 200	1190
" do " "Asia"	593	478
	793	1668
Ex "Theobold" Segs. Offshore Bunke	rs	
Wellg. " "		
" do to Str. "Asia"	40	100

[Testimony of Charles H. Blinn, for the Government.]

CHARLES H. BLINN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live in San Francisco. I am at present clerk and [1117—1058] deputy collector of customs, acting and have been acting in that capacity for nearly two I have been connected with the service for years. Before I was deputy collector of customs 35 years. I was special deputy surveyor for five years. assistant weighers are attached to the surveyor's department and they were, therefore, during the lastmentioned five years, under my jurisdiction. to the month of March, 1906, the assistant weighers were paid for overtime by the importers. The compensation would be four dollars or eight dollars when the weigher worked at night. The payment was made to him direct by the cashier of customs, the money being deposited with that officer by the im(Testimony of Charles H. Blinn.)

In the month of March, 1906, an order was issued by the department against such practice. tween the month of March, 1906, and the first day of January, 1911, assistant weighers were supposed to be compensated for overtime under an order which I, myself, issued to the chief weigher, Mr. Wooster, that these men who worked at night should be allowed a day off. It would not necessarily be the next day. No other compensation than this day off was known to the office. That was the situation until 1911. In answer to the question whether during that time any money was paid to or received by the Government for the purpose of compensating the assistant weighers, I would say I think there was an allowance made for Sunday work, but no money was paid by the importer to the Government. The assistant weighers were in fact let off for a day when they worked overtime. The ordinary compensation is paid to the assistant weighers on the first or the last of each month, and, to collect that salary, they are required to make affidavits. [1118-1059]

Cross-examination by Mr. STANLEY MOORE.

It was the practice in the old times, that is, 15 or 20 years back, for the importers to pay the assistant weighers directly for overtime; then four or five years prior to 1906 the practice was for the importer to pay this overtime to the assistant weigher through the cashier. At the present time, also, the assistant weighers are compensated in that way. The regulation by which this was brought into effect was in 1911, but I do not recall the exact date. The order which

(Testimony of Charles H. Blinn.)

I gave and which prevailed from 1906 to 1911 that the assistant weighers should be compensated for overtime by getting a day off did not mean the very next day. It meant whenever said weigher could be spared for a day.

[Testimony of Charles T. Cook, for the Government.]

CHARLES T. COOK, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live in San Francisco. I am now clerk in the U.S. customs service, and have been such since 1898. From 1906 to date I have also acted as deputy surveyor, having jurisdiction in this capacity, in a supervisory manner, over the assistant weighers and the chief weigher. I recall a regulation made effective during March, 1906, relating to compensation to be paid to assistant weighers for overtime. Prior to that date assistant weighers were compensated for overtime in the following manner: bills were filed by said weighers with the surveyor and these bills were recorded by him and filed with the cashier [1119— 1060] of customs for collection; the cashier collected the bills from the consignee of the vessel, as a rule, through the custom-house broker. The assistant weighers would be actually paid, not by the importer direct, but through customs sources. No compensation was paid in money to the assistant weighers between March, 1906, and January, 1911, for night overtime service. We were, however, authorized by the department to compensate an assistant

(Testimony of Charles T. Cook.)

weigher for such work as he rendered at night by allowing him a day off subsequently. I know as a fact that such an allowance would be actually made and taken advantage of by the weigher. During that period of time, 1906 to 1911, when a day off would be allowed to an assistant weigher for overtime work, no money was, so far as I know, paid to the Government by the consignee or importer to be in turn paid to the assistant weigher, nor, to my knowledge, were any charges of any kind made by me on behalf of the Government, through the surveyor's office or by the authority of the surveyor, against the consignee or importer, representing the value of the overtime night service of the assistant weigher.

Cross-examination by Mr. STANLEY MOORE.

Mr. STANLEY MOORE.—Q. Was this matter about allowing the assistant weigher time off in return for working overtime a matter that was in the regulation itself, or was that some subsequent authorization that you received with respect to that?

- A. It was a previous authorization.
- Q. It was a previous authorization?
- A. Yes, sir.
- Q. And what do you mean by a previous authorization?

A. We had had a practice of compensating assistant weighers and inspectors who supervised the discharge of vessels on Sundays [1120—1061] or holidays. That was determined by the department to be unauthorized by law, but the department said that if it became necessary for an officer to work on

(Testimony of Charles T. Cook.)

Sundays or holidays witnessing such discharge or loading the collector could compensate such officer by allowing him time off subsequently.

- Q. Then this regulation that you speak of in 1906 did not have any provision in it with respect to the allowing of time off, did it?
 - A. I don't know that I spoke of any regulation.
- Q. You said here, did you not, that originally the money was paid for overtime to the custom-house weighers directly by the importer; is that your understanding? A. No, sir.
- Q. When did you first become connected with the service? A. 1886.
 - Q. First in 1886? A. Yes, sir.
- Q. And when did you become connected with the office of the Surveyor of the Port? A. 1898.
 - Q. 1898? A. Yes, sir.
- Q. From that time on, for a period at least, you had a general supervision or something to do with the custom-house weighers, did you not?
 - A. More or less, yes, sir.
- Q. What was the practice then with reference to compensating the custom-house weighers for over-time back in the 80's or 90's?
- A. Bills were rendered and filed as I have testified, with the surveyor, who filed them with the cashier, who collected them by payment from the consignee of the vessel.
- Q. How early had that been the practice, that the bills would be filed by the cashier and by him the overtime be paid to the custom-house weighers—how

(Testimony of Charles T. Cook.) for back did that go?

- A. For night service? [1121—1062]
- Q. Yes. A. As far back as I can recollect.
- Q. And that is a matter of over 20 years?
- A. I should imagine so, yes, sir.
- Q. Was there a change made in the regulations, according to your recollection, in the year 1906?
 - A. Yes, sir.
- Q. Where is the copy of that regulation that was handed down in 1906? Are you just depending upon your recollection with respect to the provision?
- A. No, sir, there was a department letter dated in November—well, I can't recollect the exact date of that now.

Mr. ROCHE.—I will give you a copy of it, if you want it, Mr. Moore.

Mr. STANLEY MOORE.—Q. But there was a letter written in November, 1906, was there?

A. No, that is too late; it was earlier than that.

Mr. ROCHE.—Yes, it was earlier.

A. (Continuing.) March 27th, isn't it?

Mr. STANLEY MOORE.—Q. So as the result of some previous authorization you had received from the department you had considered that you were entitled to allow these men extra vacation time on account of overtime? A. Yes, sir.

- Q. Then so far as that letter or authorization was concerned, that was received in March, 1906, you did not understand that that even gave you that privilege?
 - A. I so understood because we put it into practice.

(Testimony of Charles T. Cook.)

- Q. But did you get it from that authorization or from that regulation of March, 1906, or did you go back to some custom that had been here in the port for years with regard to that?
 - A. Yes, by analogy, if you wish, [1122—1063]
- Q. That is, you sort of figured it out in accordance with or you foundationed it upon this previous custom that had prevailed in the port, did you not?
 - A. Yes, sir.
- Q. During the years from 1906 to 1911 do you recall what officers, if any, connected with the discharge of a vessel were paid for overtime through the importer or through the Government?

A. Inspectors of customs were the only ones authorized by law to be compensated for overtime, for night service.

The inspector of customs is the supervising officer so far as the landing or discharging of the coal-laden vessels is concerned. His duties are to be there on the vessel and around to see that the discharging is going on properly. His duties are therefore different from those of the weighers in that he goes about the bunkers, patrolling or watching the discharge of the vessel, to see that the coal, for instance, which is thus discharged, is actually weighed. Sometimes two vessels are assigned to one inspector. The money was paid by the importer to the cashier and by the cashier to the inspector. The regulation or practice of the Government itself with respect to the assistant weighers in so far as Sunday and holiday work was concerned was that for each overtime day

(Testimony of Charles T. Cook.) they should be excused for the period of a day subsequently.

Q. I am asking you whether they made the same kind of an allowance and in just the same way where the assistant weigher worked on a Sunday or a holiday during this period from 1906 to 1911 as they did when he worked on the night of a week day, and a regular working day? [1123—1064]

A. Yes. May I explain? There was a time when assistant weighers were not compensated for Sundays at all unless they worked?

Mr. ROCHE.—Q. That is, when they were paid by the day?

A. Yes, sir, when they were on a per diem basis of compensation, and at that time they received no compensation for Sundays unless they actually performed duty, so that when they did perform duty on a Sunday they were compensated for that by the Government at the expense of the collector of revenue.

(Witness continuing.) This per diem basis was in vogue in some part of the period from 1905 to 1911, but not for any considerable portion of this period.

Redirect Examination by Mr. ROCHE.

That compensation, however, was paid by an appropriation made by Congress for the expenses of the collector of revenue in the same way as the regular salary was paid. Since that time those men have been on a regular annual salary, payable in monthly installments, with Sundays off, so that subsequently

(Testimony of Charles T. Cook.)

to 1905 and prior to 1911 when the assistant weighers were called upon to work on a Sunday they would get an extra day for it.

[Testimony of Bud Hopkins, for the Government.]

BUD HOPKINS, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I am, and have been for some time, timekeeper in the employ of the Western Fuel Company. The company does not [1124-1065] have in its possession all of the time-sheets or time-books of its employees since the fire in San Francisco, some of them having been destroyed possibly about two years ago when the company moved its office. I went into the employ of the Western Fuel Company as timekeeper in June, 1907, and have continued in that capacity up to the present time. I have knowledge concerning payments made to assistant customs weighers by the company representing compensation for overtime between the month of June, 1907, and the early part of 1911. money was paid to the assistant weighers by the defendant, Eddie Mayer. He in turn obtained the money from me in cash, and I got it from the cashier, I. H. Story. I have no present knowledge concerning the person who instructed Mr. Story to pay me the cash. I could not say whether Mr. Mayer took a receipt from the assistant weighers when he gave them this money. I kept the time for the stevedores, and paid them myself by cash, and I took a

receipt from the stevedores for each amount of cash thus paid. I kept regular weekly time-books. Opposite a particular number would appear the name of a particular employee within my jurisdiction, and the time-book would not only show the name but the hours during which the given employee worked in the week covered by the time-book. When I paid an employee for the week he would sign his name on the time-book. Mr. Mayer would sign in the timebook for the money that I gave him to be by him paid as compensation to the assistant weighers. I have no recollection, however, of any assistant weigher signing his name to any one of these timebooks for compensation paid him, or of his signing any other paper. I would state from my recollection that possibly between \$250 and \$300 a year was paid from the end of June, 1907, to the first of January, 1911, for overtime to the assistant custom weighers. You (addressing Mr. Roche) [1125— 1066] asked me to make a computation of the timebooks for the period June 1, 1910, to December 31, So far as I know, you had not examined the books for the various years when you selected this period. The compensations to assistant weighers for this period amounted to \$240.50. In most every case I used a particular number in the timebook opposite which to insert the compensation paid by me to Mayer for these weighers, and that number was 96 as a rule but not necessarily 96. The dates appearing on the time-books would be those on which the money was paid, and that day would be a

Saturday. (The attention of the witness was here directed by examining counsel to one item opposite the number 96 and the letters C. H. O.) The names which appear below that number and those letters are the names of the steamers which were being discharged and the items are the items of overtime. One is \$8.50 and the other \$4.00. The signature, "E. Mayer," is that of the defendant, Mayer, to the best of my knowledge. The overtime was one dollar an hour. The fraction in the item of \$8.50 may have occurred by reason of the fact that the customs officer worked during the noon hour and had his dinner sent in.

(The time-book was here offered in evidence by the United States, there being no objection, and was marked U. S. Exhibit No. 157.)

Cross-examination by Mr. STANLEY MOORE.

The period in 1910, where the amount paid was \$240, had one item in it that was unusually large. It related to the unloading of a vessel called the "Manhattan." The item was \$35.50. Therefore, one-quarter of the \$240 total was made up of this item. Such a large item is very unusual. I looked over some other books after examining this particular period. The amounts for other periods were very small. I mentioned in my direct examination [1126—1067] something about lunch. There were a good many times when the ships would have to work one hatch during the noon hour, and it was only fair, inasmuch as we requested the customs officer to stay there during that hour, that we should

provide him with his lunch. Mr. Mayer turned the memorandum with respect to the custom-house weigher in to me. It sometimes included food and sometimes payment for overtime. He brought me the items in the form of a memorandum on a card and when I paid him the money he gave a receipt for it on the time-book, and the time-book which was signed by him shows the letters C. H. O. which indicate custom-house officer. The custom-house officer worked on the waterfront from seven in the morning until five at night, with one hour off for dinner. Oftentimes, however, the company would want to keep a hatch open during the noon hour, and, in such cases, the weigher would be paid for overtime, and, in addition, his lunch would be brought to him. Sometimes, also, the company wished to discharge a vessel on into the night, or into a part of the night, in order to finish up the ship. That would occur very often. In those cases, likewise, overtime would be paid.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred:

Q. Is it or is it not the fact that all along the waterfront when mercantile concerns wanted to get freight off, or wanted to carry the operations past the regular hours of the custom-house employees, that that overtime was paid?

Mr. ROCHE.—One minute. We object to the question, may it please the Court, first, on the ground that no proper foundation has been laid, and sec-

ondly, that it is immaterial, irrelevant and incompetent, and not proper cross-examination. [1127—1068]

The COURT.—It is not cross-examination; the objection is sustained.

Mr. STANLEY MOORE.—An exception. That is all.

(Counsel for the prosecution here explained that they were going to put the witness, Costello, back on the stand for the purpose of explaining one calculation relating to a circumstance connected with this case, which said counsel intended thereafter to argue to the jury; and counsel for the prosecution further stated that they believed it not only proper to advise the jury, but, opposing counsel, of such course.)

[Testimony of M. J. Costello, for the Government (Recalled)].

M. J. COSTELLO, a witness recalled for the United States, testified as follows:

Direct Examination by Mr. ROCHE.

Mr. ROCHE.—Q. Mr. Costello, will you take this diary of 1907; I direct your attention to January 7th.

May it please the Court, at this time, and as preliminary to the examination of the witness, I want to read to the jury a part of one of the entries which has already been introduced in evidence, one of the entries and also a drawback claim. The entry which I now hold in my hand, and which already has been introduced as an exhibit in connection with other

entries, relates to the steamer "Tellus," from Ladysmith, ariving at port San Francisco, January 18, 1907.

The consumption entry shows that laden upon this vessel, the "Tellus," were 3752 tons of coal, valued at \$15008; the ascertained weight or custom-house weight was 3645 tons.

Attached to this entry is an affidavit made by the defendant, James B. Smith, in the following language: "Pacific Mail Steamship Company. Certificate of Delivery of Imported Merchandise. Port of San Francisco, March 21, 1907. Description of Merchandise. [1128—1069] Coal By Whom Imported Western Fuel Company How Imported"—I don't know what the first word here is, but the other is "Steamer Tellus." When Imported January 18–07. Where Imported San Francisco. Whence Imported, Ladysmith. Quantity 565 tons Value \$2825. Rate of Duty Paid 67c Entry Number 979."

In red ink appears the following: "Entry No. 63. Date Jan. 31 07, Tons 565. All Consumed by Entry #63. Filed Jan. 21-07.

"I, Jas. B. Smith, Vice-pres and a stockholder Western Fuel Company do solemnly swear that the Merchandise herein described was imported as herein stated; that the duties were paid thereon as herein shown, without allowance or deduction for damage or other cause, except as herein set forth, and that the said Merchandise has been delivered to Pacific Mail Steamship Co. and that no other certificate of delivery covering the above Merchandise has been issued by me. (Signed) James B. Smith,

Importer. Sworn to before me this Mar 21 1907 Geo. H. Probasco, Notary Public in and for the City and County of San Francisco, State of California. Commission expires April 11, 1909."

Now, the rebate claim is No. 63. The date of clearance indicated upon the back of the claim is January 25, 1907. The export vessel, that is, the vessel, into which the coal was laden for fuel purposes, was the "City of Para." The claim shows "Entry of coal intended to be shipped under official supervision by the Pacific Mail Steamship Company to be used for fuel on the American Steamer 'City of Para' Curtis Master, a vessel propelled by steam, duly registered under the laws of the United States, and engaged in Foreign Trade, now in port. Quantity 565 Tons. Date of Importation Jan. 18-07. Importing or Transporting Vessel, Str. 'Tellus.' Amount of duty \$378.55 J. S. H. Entry No. 979. [1129—1070] Vessel Cleared for Ancon. Pacific Mail Steamship Co. By J. S. Mallord, Attorney in Fact."

At the bottom is: "I have superintended the transfer and lading of the within described coal on board the 'City of Para' John A. Ross Inspector, F. L. Wooster, Weigher. Weight 564 2037—2240 Tons Coal D. A. W. Chenoweth, A. W. Vessel Cleared Jan 25–07."

The entry number from which I read a moment ago is No. 979, being the same number that is specified in this drawback claim.

Q. Now, Mr. Costello, the diary which you hold in

your hand is the diary kept by the defendant, Mills; that is correct, is it not?

A. Yes, sir.

- Q. And with which you are more or less familiar?
- A. Yes, sir.
- Q. I will ask you to look under January 7, 1907, or between January 7, 1907 and January 31, 1907, and state whether there was any coal laden upon the barge "Nanaimo." Let me withdraw that question and put it in this form: I call your attention to a tabulation which I hold in my hand and ask you in whose handwriting that tabulation is?
 - A. It is in mine.
 - Q. From what did you compile that tabulation?
 - A. From this diary.
- Q. From the diary which you now hold in your hand?
- A. Yes, or, rather, the photographic copy of this diary.
- Q. From the photographic copy of the diary kept by the defendant, Mills, for the year 1907; is that correct? A. That is correct.
- Q. I call your attention to the barge "Nanaimo" appearing upon this tabulation opposite January 7 –31–07. Does that mean that the coal that is indicated below that was checked into the barge between those two dates?
- A. Between those two dates, [1130—1071] yes, sir.
- Q. The first item appearing under the barge "Nanaimo" is, "Account of Shelar, 266 tons, 1480 pounds"; that is shown by that diary is it?

- A. Yes, sir, that is shown by that diary on January 7th.
- Q. The next item is "Offshore bunkers, 31 tons, 1830 pounds," Will you turn to that item, please in the diary; I want to get the date upon which that coal was turned into the barge?
 - A. January 10th.
- Q. That was checked into the barge on January 10? A. From the offshore bunkers.

Mr. ROCHE.—I desire to direct the jury's attention again to this entry, which shows that the steamship "Tellus" arrived in port January 18, 1907, 8 days after that coal was discharged into the "Nanaimo" from the offshore bunkers.

- Q. Now, directing your attention to the next item appearing in this tabulation, under the barge "Nanaimo," the "Shelar," 719 tons, 750 pounds, was that also shown by the diary which you hold in your hand?
- A. Yes, sir, that was put on the barge between the dates of January 9th and the 11th.
- Q. And the last item appearing under the barge "Nanaimo," "Titania," voyage 184, 809 tons, 1390 pounds; that is also shown by that book?
 - A. Yes, sir.
- Q. Making a total quantity of coal checked into the barge between the 7th and the 31st of January, 1907, of 1827 tons, 870 pounds; is that correct?
 - A. That is correct.
- Q. I will ask you whether immediately underneath the items to which I have just directed your

(Testimony of M. J. Costello.) attention are the names of the [1131—1072] steamers into which the 1827 tons, 870 pounds of coal is supposed to have been discharged?

A. Yes, sir, they are.

Q. And those items are likewise taken from the dock-book which you now hold in your hand?

A. Yes, sir.

Mr. ROCHE.—This says: "City of Sydney," 251 tons, 768 pounds; 'Coptic' 674 tons, 276 pounds; 'Track' 21 tons, 1460 pounds; "City of Para," 31 tons, 400 pounds; "Korea" 976 tons, 848 pounds. Total, 1954 tons, 1521 pounds, or an overage of 127 tons, 642 pounds. In other words, the overage upon that barge at the time of clearance, was 127 tons, 642 pounds more than had been checked into the barge; is that correct? A. That is correct.

- Q. Now, I direct your attention to the barge "Theobold." According to this tabulation, between the 21st and the 23d of January, 1907, there was checked into the barge "Theobold" 451 tons, 630 pounds; is that correct? A. That is correct.
- Q. Consisting of two items, 1 offshore bunkers, 39 tons, 2170 pounds; and the "Tellus," 411 tons, 700 pounds, making a total of 451 tons, 630 pounds?
 - A. Yes, sir.
- Q. Can you state, from an examination of the book kept by the defendant, Mills, which you now hold in your hand, the date upon which the 39 tons 2170 pounds were laden into the offshore bunkers—I will withdraw that question and put it in this form: Let me have the date upon which the 39 tons, 2170

pounds was discharged into the "Theobold" from the offshore bunkers? A. January 21.

- Q. January 21? A. Yes, sir, January 21.
- Q. Do you know the date upon which the "Tellus" first commenced to discharge? A. January 18.
 - Q. She commenced to discharge on January 18?
 - A. Yes, sir, and finished on the 21st.
- Q. Can you tell from that record whether during any one of those [1132—1073] three days any part of the cargo of the steamship "Tellus" was discharged into the offshore bunkers?
- A. No, the records don't show any discharge to the offshore bunkers.
- Q. You say the records do not show any discharge to the offshore bunkers; you are satisfied upon that point, are you?

 A. I am satisfied, yes, sir.
- Q. But the steamship "Tellus" was being discharged on that day, and for two days prior to that day; is that correct? A. That is correct.
- Q. I will ask you if, according to the records of the defendant, Mills, all of the coal discharged upon this barge "Theobold," to which you have just referred, upon the 21, 22 and 23d days of January, 1907, or on two days between those dates, aggregates 451 tons, 630 pounds discharged into the "City of Para"?
 - A. Yes, sir, it was.
- Q. And according to those records, the 451 tons 630 pounds aggregated, when discharged into the "City of Para" 533 tons, 1637 pounds; is that correct? A. Yes, sir.
 - Q. There was an overage off that barge of 82 tons,

1007 pounds? A. That is correct.

- Q. Now, directing your attention to the other side of this tabulation, entitled "Recapitulation showing coal charged to steamship 'City of Para'"; does this part of the tabulation also correspond to the figures and the data contained in the dock-book which you now hold in your hand?
- A. Yes, sir, they were taken from the figures just read.
- Q. And those four items, appearing on the right hand side of this page, indicate the quantity of coal which, according to the records kept by the defendant, Mills, was laden into the "City of Para"; that is correct, is it not? A. Yes, sir, [1133—1074]
- Q. Now, I call your attention to these items: "Off-shore bunkers, per 'Nanaimo,' 31 tons, 400 pounds"; was that coal taken off the "Nanaimo" during that period of time covered by the date appearing on the other side of the page, that is, between January 7th and 31st?

 A. Yes, sir.
- Q. And then again, "Offshore bunkers, barge 'Theobold,' 39 tons, 2170 pounds"? A. Yes, sir.
- Q. The 39 tons, 2170 pounds, correspond, do they not, with the coal discharged int the "Theobold" between the 21st and the 23d of January from the offshore bunkers? A. Yes, sir.
- Q. Into which, according to the records kept by the defendant, Mills, no part of the cargo of the steamship "Tellus" had been, up to that time, discharged?
 - A. That is correct.
 - Q. Then, from the "Tellus," according to these

(Testimony of M. J. Costello.) records, there was discharged 411 tons, 700 pounds?

- A. Yes, sir.
- Q. Now, in order to make up the 564 tons, 2037 pounds, which, according to these records, was discharged into the "City of Para," an overage of 82 tons, 1007 pounds had to be taken into consideration; is that correct? A. That is correct.
- Q. In other words, the 31 tons, 400 pounds, and 39 tons, 2170 pounds, and 411 tons, 700 pounds, are 82 tons, 1007 pounds short of 564 tons, 2037 pounds; is that correct?

 A. That is correct.
- Q. Does the dock book which you now hold in your hands showing the discharge of the steamer "Tellus" indicate that up to the time that the "City of Para" was coaled any part of the cargo of the "Tellus" was discharged into any of the compartments or pockets of the offshore bunkers? A. No.

Mr. ROCHE.—We offer this tabulation in evidence.

Mr. STANLEY MOORE.—No objection.

(The tabulation was here marked U. S. Exhibit 158, and is in words and figures as follows:) [1134—1075]

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Ex "Nanaimo".—January 7/31, 1907.	fanuary 7/31, 190	7.) 1.hg	Recapitulation, showing Coal Charged to S. S. "City of	City of	
a/c "Sheila"	64	Ť	1480		Tons. Lbs.	
" Off. Shore Bunkers		31. 18	1830	Offshore Bunkers (per Nanaimo)	31 400	
". "Sheila"	2	719. 6	650	" (" Theobald)	39 2170	
" "Titania"-Voy. 184	•	809. 13	1390	Tellus (" ") 411	200	I II
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City of Sydney	251.768			numa o) IV
Coptic	674.276			Total 564	2037	
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City of Para	31.400			Whereas:		
Korea	976.848 19	1954. 15	1512	Certificate of delivery executed on March 21, 1907, covers	7, covers	les
		1	1	565 Tons Coal-Ex "Tellus" Jan. 18, 1907.		0 j
Over	127.642			Ent	Entry #979.	71
Ex "Theobald"—January 21/23, 1907.	January 21/23, 19	07.		NOTE: Dock Book records show that Str. "Tellus" did not	" did not	me
a/c Off. Shore Bunkers		39. 21	2170	discharge any coal to Offshore Bunkers, on this trip.	p.	1100
" "Tellus"	4	411. 7	200	The coal laden on Barge, "Nanaimo" from Offshore Bunk-	re Bunk-	w.
	1		1	ers was laden on January 10th, 1907, whereas Str. "Tellus"	"Tellus"	
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Cross-examination by Mr. STANLEY MOORE.

BE IT REMEMBERED that thereupon, the following testimony was given and that the following proceedings were had:

Mr. STANLEY MOORE.—Q. Mr. Costello, according to the Mills books, at least, when a barge is receiving coal, this may come from the offshore pockets, may it not? A. Yes, sir.

Q. And other tons of coal may come from the yards with respect to the same barge? A. Yes, sir.

Q. And then parts of it may be discharged directly from a ship which is at that time discharging at the bunkers? A. Yes, sir.

Q. The coal may be carried around in the cars and dumped into the offshore pockets, and down directly into the barge below; isn't that the fact?

A. That is what the records show.

Q. And during this three or four months that may elapse before what is called a cleanup of the barge takes place, it may have come to the bunkers a number of times, may it not?

A. Yes, sir, on some occasions.

Q. Or it may have come to the bunkers that received directly coal from a number of different ships which may have been engaged in discharging there; is not that the fact? A. Yes, sir.

Q. But these forms that are supplied, or that are in accordance with the Government regulations, only relate to single ships, or single cargoes, do they not?

A. Yes, sir.

Q. These forms that were signed here, are made

out with respect to an application for drawback on coal of the Pacific Mail Company, they are all, so far as you understand them, in accordance with the Government regulations upon those subjects, are they not? A. Yes, sir. [1136—1077]

- Q. And one of the necessary documents is the Entry of Merchandise of the particular vessel, in this case the "Tellus"; is not that correct?
 - A. That is correct.
- Q. That is a single ship, and pertains to merchandise, or cargo imported by that particular vessel as it has been filled out there? A. Yes, sir.
- Q. This affidavit that has been signed by Mr. Smith is a brief printed form, is it not, so far as the affidavit portion of it is concerned?

Mr. ROCHE.—One minute: That question is objected to upon the ground that the affidavit speaks for itself. In the affidavit it is positively asserted that all of this coal was taken from a particular ship, which is required by the United States regulations, in order to entitle them to drawback.

Mr. STANLEY MOORE.—If your Honor please, I wanted to show what the fact was, a fact known to the Government sanctioned by the Government, and followed by every importer in this port for the purposes of convenience, whether on coal or on anything else.

Mr. ROCHE.—I don't understand what the attitude of Mr. Moore is, respecting this matter. The Government regulations require, in order to entitle a person to a drawback, that an affidavit shall be pre-

sented showing the particular vessel from which the coal was taken, and in which the coal was imported. Now, then, this affidavit, I assume, was prepared and it was sworn to by Mr. Smith, in conformity with the declarations, and of course it was presented to the Government, and the Government, assuming that it was correct, naturally paid back the drawback. There is no question about that. The Government in this case is not bound by what other people do. The Government assumes that that affidavit correctly sets forth the facts. It has a right to rely [1137—1078] upon the affidavit, as it unquestionably did in this case. The mere fact that other affidavits may have been made by other people in certain ways, and affecting other cargoes, that would in no manner affect the case here on trial.

Mr. STANLEY MOORE.—I don't know what counsel's purpose was in attempting to inject this matter into the case at all as reflecting any fault or wrongdoing, by the wildest stretch of imagination, in so far as any of the defendants are concerned.

The COURT.—I suppose the purpose of the introduction of the evidence was to show that the amount of coal could not have been imported by the "Tellus" without counting the overage.

Mr. STANLEY MOORE.—No, your Honor. The purpose of it was this: The purpose of it is to show that that particular vessel, the "Tellus," did not discharge her entire cargo of imported coal into the liner of the Pacific Mail, to which the Pacific Mail's application for drawback related. It is to show that

(Testimony of M. J. Costello.) the whole of the cargo of the "Tellus" did not go into some particular liner of the Pacific Mail.

Mr. ROCHE.—No, your Honor, Mr. Moore does not understand the situation here, if I may suggest that. Here is the situation, may it please the Court: It is claimed in the indictment in this case, among other things, that the Government was defrauded out of certain drawbacks, by means, among other things, of false affidavits, to use the language of the indictment. Now, then, in order that the Pacific Mail Steamship Company should be able to get back from the Government the duty which the Government is supposed to have received in the first instance from the Western Fuel Company upon the importation of this coal, coal subsequently laden into the "City of Para," if I may use this particular case for purposes of illustration, an affidavit must be filed showing [1138—1079] that the particular coal which was laden into the "City of Para" and as to which this drawback is claimed, was imported upon a particular vessel, so that the Government may thereafter check up for the purpose of determining whether duty was paid upon that coal, or not. Now, then, the tabulation which we have just introduced into evidence, and which was explained by the witness upon the stand, shows two things; it shows, first, that the 565 tons was made up, among other things, by 82 tons of overage; and it also shows, may it please the Court, that, notwithstanding the fact that the affidavit does state that the 565 tons of coal had been imported upon the steamship "Tellus" at a particular time, the "Tell-

us" arriving at this port and making Entry upon a particular date, that, in fact, at least 60 odd tons of that coal had been lying in the offshore bunkers prior to the date upon which the "Tellus" arrived at the port of San Francisco; in other words, that the affidavit is incorrect and false in so far as it relates to some 60 odd tons of coal, because those 60 odd tons of coal had actually been deposited in the offshore bunker, from which the barge subsequently took that quantity of coal before the "Tellus," the steamship in which, according to this affidavit, the coal was imported, ever arrived in the City of San Francisco.

Mr. STANLEY MOORE.—That shows, if your Honor please, that I was correct in regard to my assumption. This witness has already testified respecting the overage three or four times, although I am not clear as to what was the amount of the overage according to him, or the percentage of the overage according to him, as yet. But, just now he is called to the stand with respect to these affidavits. And the whole purpose in offering them is to show that that vessel, the "Tellus," that its coal did [1139—1080] not actually go into the "City of Para" in the amount that is included within these forms. And I wanted to illustrate from this witness as a practical and feasible proposition, in view of the fact that this coal, all being imported coal, goes to make up the aggregate of a barge, maybe a dozen different vessels, and a large proportion of other vessels, they don't know which vessel it may be, or from the inshore pockets, or from the yard, or sometimes

the offshore bunkers—I say I want to show that the practice and the rule and the regulation, and the only way known or provided for or feasible under the Government's forms and plan, is to take this imported coal and make these affidavits, prepared by the custom-house brokers, approved by the federal authorities, and not necessarily relating or showing that an entire cargo of a particular vessel went into a particular barge, or from there into a particular drawback steamer. To attempt to do that, if your Honor please, would be impossible in the nature of the business. There is no machinery provided for it, and it would involve the filing of hundreds of affidavits, instead of one.

Mr. KNIGHT.—And may I suggest, if your Honor please, as long as counsel has referred to this indictment, that there is no charge, whatsoever, in the indictment, that these affidavits were prepared for the purpose of obtaining drawback duties on coal from vessels other than the vessels specified. only charge here is that these defendants did, among other things, make or cause to be made fraudulent affidavits and statements to the officers of the Government for the purpose that the said Pacific Mail Steamship Company should claim from the United States a greater rebate or drawback on coal duties, where such drawback is permitted, making reference to American registered [1140—1081] vessels engaged in foreign trade, getting a greater sum than the true weight of said coal would entitle them to receive. That is the charge.

The COURT.—Without passing on the question as to whether you are entitled to make this proof that, you offer, this is not cross-examination of this witness, because the document upon which it is based was long since introduced in evidence, and is absolutely disconnected from this witness entirely. The only thing this witness has testified to, has been as to certain calculations made upon the books of the defendant, Mills. The objection is sustained.

Mr. STANLEY MOORE.—Q. Mr. Costello, as a matter of fact, according to the Mills books, there went into that particular barge which discharged among other vessels, into the "City of Para," coal that came from a number of different vessels, coal that had originally come into this port laden upon a number of different ships; is not that correct?

A. Yes, two or three, I think, two or three different vessels.

Q. And did not there also come into that particular barge coal from bunkers as to which there was no designation as to what ship it had come into the port on? A. Yes, sir.

Q. And perhaps there may have been coal that came into the barge from the yards, although that might not be true as to this particular instance, but that does occur with respect to the loading of these barges, according to those books, does it not?

A. Yes, sir, it does.

Q. Is it or is it not a fact that all of that coal is imported coal, whether it came in on one ship or another, as to which when loaded into an American

bottom, the owner of that bottom, who pays [1141—1082] for that coal, is entitled to a drawback.

Mr. ROCHE.—One minute: We object to the question as calling for the conclusion of the witness. It asks the witness to pass on the regulations enacted by the United States Government, and furthermore, it is not proper cross-examination.

The COURT.—The objection is sustained. The books show, and it will probably be taken as a fact, so far as the Curt can determine it, that most of the coal discharged from the offshore bunkers was imported coal.

Mr. ROCHE.—Yes, your Honor, all of it, in fact, I think.

The COURT.—And it appears that the coal that was laden into the "Comanche" came from different places, among others, the offshore bunker. I assume that would be establishing, at least indirectly, that the coal was imported coal.

Mr. ROCHE.—Yes, your Honor.

The COURT.—I don't understand that there is any claim on the part of the Government in this case that they were not entitled to drawback on this particular coal, the claim being that more drawback was claimed than they were entitled to, and that all of it did not come in on the steamship "Tellus."

Mr. STANLEY MOORE.—That is not the purpose of this particular evidence, your Honor. In that view, it would not make any difference what vessel it was, so far as that particular contention is concerned. The witness has been examined on that,

but has not stated—and we don't know now that what proportion of overage he claims existed with respect to these barges. I can get at the matter this way, however: How many of these invoices or consumption entries would be used up in the discharge of that cargo, if there had been attempted to be made an affidavit and papers concerning each one of them claiming the coal, and the vessels, if that could [1142—1083] be done, which had been laden into the barge, and which went out of the barge?

Mr. ROCHE.—I object to the question as not proper cross-examination, as calling for the conclusion of the witness, and as immaterial.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—Note an exception.

Q. Do you know any way from those Mills books, with respect to the coal that was actually laden into these barges, by which the claims could be segregated as to the particular ships and the proportions from the original cargoes of each which had found its way into the barge "Melrose" and from there into the "City of Para"?

Mr. ROCHE.—The same objection.

The COURT.—The objection is overruled.

A. I have not given that matter any consideration.

Mr. STANLEY MOORE.—Q. I don't want you to answer this unless the Court permits you to. Have you given the matter any consideration with respect to, say, the affidavits which were made by the officials of the Pacific Coast Coal Company, with respect to drawback on imported coal in this port?

Mr. ROCHE.—That is objected to on the ground that it is not proper cross-examination and immaterial.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

Mr. OLNEY.—Q. According to Mr. Mills books, the coal which went into the "City of Para" did not come entirely from the "Tellus," which is assigned as the source in the affidavit; is that correct?

A. That is correct.

Q. Would it have made the slightest difference to the Government, [1143—1084] or did it make the slightest difference to the government, that the "Tellus" is assigned as the source of the coal, rather than the sources which are specified in Mr. Mills' books?

Mr. ROCHE.—That is objected to as calling for the conclusion of the witness.

The COURT.—Yes. We ought all to know that just as well as the witness. If it was imported coal, it could not, of course. The objection is sustained.

[Testimony of D. C. Norcross, for the Government (Recalled—Cross-examination).]

D. C. NORCROSS, a witness recalled for cross-examination by the defendants, testified as follows:

Cross-examination by Mr. McCUTCHEN.

Mr. McCUTCHEN.—Q. Mr. Norcross, your attention has been called to some resolutions passed by the board of directors of the Western Fuel Company, in which reference is made to financial statements;

(Testimony of D. C. Norcross.)
do you recall that testimony?

A. Yes, sir.

Q. I show you now a number of statements, beginning with one headed "Western Fuel Company, General Balance Sheet, March 31, 1907," and ending with one entitled "Western Fuel Company, General Balance Sheet, December 31, 1912," and I ask you if those are the financial statements to which you refer?

A. Those are the monthly financial statements, earnings, and expense, and general balance sheet that were referred to in the meetings.

Q. And those are the statements referred to in the resolutions which Mr. Roche offered in evidence?

A. Yes, sir, with the exception of the annual statement; sometimes there might be others—

Q. (Intg.) I called your attention specifically this morning to [1144—1085] the annual statements. I am referring now to the financial statements. A. Yes.

I got these statements to-day from Mr. Tidwell. They have been in his possession since about December, 1913, I think, or whenever the Court order was made to deliver the records.

The statements immediately hereinabove referred to were here introduced in evidence as Defendants' Exhibit "L." Said statements are, by that certain stipulation of the parties and order of the Court hereinafter set out in this Bill of Exceptions, sent up in the original to the Circuit Court of Appeals for the Ninth Circuit and are by said stipulation and order made a part hereof in all respects as if literally

incorporated at large herein. The first of said statements (viz., that dated March 31, 1907), and the last of said statements (viz., that dated December 31, 1912) are by way of samples actually incorporated at large herein in words and figures as follows, to wit:

[Defendants' Exhibit "L"—Financial Statements Dated March 31, 1907, and December 31, 1912.]

WESTERN FUEL COMPANY.
GENERAL BALANCE SHEET—MARCH 31, 1907.

111111111111111111111111111111111111111	
Capital Stock	1,000,000.00
Property Account	858,416.69
Investment Account	254,933.26
Construction Equipment	10,250.77
Nanaimo Agency	1,353.78
Cash Account	27,103.57
Coal & Mdse. Bills	35,993.10
General Bills	74,059.94
Audited Vouchers	31,193.91
Bills Payable	3,000.00
Bills Receivable	28,500.00
Suspense Account	10,275.00
Suspended Insurance	323.25
Western Fuel Co. Cement Account	11,640.53
" " Coal Account [1145—1086]	269,001.21
Operating Expenses	363,130.85
San Francisco 3,83	33.89
Nanaimo 359,25	96.96
Gross Earnings San Francisco 118,4:	484,524.07
Nanaimo 366,1	12.57

Cash Account, Nanaimo	38,816.29
Coal "	19,685.60
Accounts Collectible, Nanaimo	17,441.18
Store Stock "	46,655.50
Farm Produce "	2,796.77
Accounts Payable "	110,515.38
Suspense Account "	13,315.38
Suspended Insurance "	2,618.61
Suspended Taxes "	1,752.75
Personal Injury Fund	2,332.28
Western Bldg. Material Co.,	44,700.58
Adjustment Account	8,917.34
Profit & Loss	1,192.24
Depreciation Account	29,412.77
Surplus Account	401,256.42
	1,102,554.51 1,102,554.51

WESTERN FUEL COMPANY. STATEMENT OF EARNINGS AND EXPENSES.

MONTH OF MARCH, 1907, AND FISCA	L YEAR TO M.	ARCH 31, 1907.
	Month of	Fiscal year to
	March 1907.	March 31/07
EARNINGS:		
Mine Earnings	105,095.57	296,748.97
Gross Profit on Coal Sales	24,092.50	60,892.26
Store Earnings	538.61	1,507.95
Miscellaneous Earnings	407.04	1,279.55
Estate Earnings	1,224.57	3,864.84
Protection Ferry Earnings	610.00	1,819.00
Total	131,968.29	366,112.57
Coal Account Earnings	53,750.64	101,814.00
Rental Mission St. Bunkers	1,000.00	3,000.00
Profit on Investments	3,469.50	13,597.50
Total	58,220.14	118,411.50
Total Earnings	190,188.43	484,524.07

EXPENSES:		
Mine Expenses	125,266.10	345,132.86
Development Shaft No. 1	1,244.76	3,832.24
Sacking Acet.	16.18	
Commissions & Exchange	983.41	2,435.18
[1146—1087]		
Estate Expenses	2,818.26	6,448.68
Protection Ferry Expenses	605.60	1,646.37
Donations	97.10	345.00
Total GENERAL EXPENSES:	131,031.41	359,296.96
General Office Salaries & Exp.	881.84	2,537.44
Interest & Discount	29.62	1,188.75
Insurance	35.90	107.70
Total	947.36	3,833.89
Total Expenses	131,978.77	363,130.85
NET EARNINGS	58,209.66	121,393.22

WESTERN FUEL COMPANY.

GENERAL BALANCE SHE	ET.	DECEMBER 31, 1912.
INVESTMENT ACCOUNT		132,438.98
CONSTRUCTION & EQUIPM	MENT	425,456.64
PROPERTY ACCOUNT		674,793.51
ACCOUNTS RECEIVABLE:	_	
Coal & Mdse. Bills S. F.	625.00	
Coal Bills S. F.	418,652.89	
Coal Bills Oakland	36,535.07	
General Bills S. F.	38,221.42	
Bills Receivable S. F.	36,083.81	
Coal Bills Nanaimo	129,500.38	
Bills Collectible, Nanaimo	2,136.84	
Mdse. Bills Nanaimo	7,823.69	
COAT ACCOUNT		669,579.10
COAL ACCOUNTS:—		
San Francisco	22,779.03	
Oakland	26,147.31	
Nanaimo	2,772.45	
		51,698.79

C C WELLOW!		# 000 00	
S. S. "THOR" & OWNERS	7.	5,936.28	
SUSPENDED INSURANCE San Francisco	4,063.18		
Nanaimo			
Nanaimo	4,884.94	8,948.12	
CASH ACCOUNTS:-			
San Francisco	13,785.90		
Nanaimo	29,716.83	40 500 50	
STORE STOCK:-		43,502.73	
San Francisco	2,019.16		
Nanaimo	93,057.77		
SUSPENDED TAXES:		95,076.93	
San Francisco		799.69	
FARM PRODUCE		8,118.68	
SUSPENSE ACCOUNT S. I	ت .	15,401.61	
OPERATING EXPENSES:		20,202.02	
[1147—1088]			
San Francisco	444,747.29		
Nanaimo	2,007,738.80		
S. S. "THOR" Operating	11,190.50		
BRIQUETTE PLANT		2,463,676.59 $7,707.54$	
LAND SALES CONTRACTS	3	157,433.12	
PROFIT & LOSS		2,115.25	
CAPITAL STOCK		-,	1,000,000.00
AUDITED VOUCHERS	S:		,
San Francisco	107,098.17		
Nanaimo	44,650.55		
			151,748.72
BILLS PAYABLE			368,197.48
WESTERN BUILDING		CO.	79,044.75
PAY CHECK ACCOUNT			138,273.10
PERSONAL INJURY			9,937.84
DEPRECIATION ACC GROSS EARNINGS:—			144,012.59
San Francisco	519,911.27		
Nanaimo	2,215,657.90		2,735,569.17
	2,210,001.00		
SURPLUS			122,025.07
GORDON, James, Jane	t & Jane		4,999.00
NANAIMO Agency			542.50 5,333.34
BRYDEN, ROBT. CUMBERLAND COAL	CO		3,000.00
CUMBERLAND COAL	00.		
		4,162,683.56	4,762,683.56

WESTERN FUEL COMPANY.

STATEMENT OF EARNINGS AND EXPENSES. MONTH OF DECEMBER, 1912, AND FISCAL YEAR TO DECEMBER 31, 1912.

			Month of	Fiscal Year
EARNINGS:	Nanaimo	California	Dec. 1912	to Dec. 31, 1912.
Mine Earnings	149,838.07		149,838.07	1,813,700.43
Gross Profits on Coal Sales	24,473.62		24,473.62	255,735.13
Store Earnings	378.69		378.69	12,255.03
Miscellaneous Earnings	342.39		342.39	6,608.55
Estate Earnings	10,218.03		10,218.03	48,985.29
Railroad Earnings	452.19		452.19	6,675.47
Stevedoring Earnings	1,492.95		1,492.95	19,092.05
Saw Mill Earnings	2,391.10		2,391.10	49,999.37
Sacking Earnings	4.88		4.88	106.58
Western Transport Earn-				
ings				2,500.00
Gross Profits on Coal Sales		28,900.00	28,900.00	283,309.64
Miscellaneous Earnings		408.81	408.81	8,760.01
Premiums		409.73	409.73	5,890.42
Profits on Investments		5,750.00	5,750.00	12,683.00
Discharging Earnings		5,095.54	5,095.54	99,233.11
Trimming Earnings		1,180.95	1,180.95	18,624.50
Team Earnings		3,132.99	3,132.99	35,695.33
Barge Earnings		4,928.59	4,928.59	55,715.26
Totals	189,591.92	49,806.61	239,398.53	2,735,569.17
S. S. "Thor" Earnings				115,211.33
TOTAL EARNINGS	3		239,398.53	2,850,780.50
[

			Month of	Fiscal Year
	Nanaimo	California	Dec. 1912	to Dec. 31, 1912
EXPENSES:				
Mine Expenses	153,535.21		153,535.21	1,901,399.20
Commission & Exchange	3.72		3.72	18.02
Estate Expenses	2,475.89		2,475.89	41,915.45
Donations	150.27		150.27	2,277.33
Stevedoring Expenses	1,489.21		1,489.21	16,079.21
Saw Mill Expenses	2,790.88	E (9 (9)	2,790.88	46,049.59
Repairs		563.63	563.63	7,882.31
Storage Delivering		1,577.42 $3,828.45$	1,577.42 3,828.45	8,268.83 40,754.03
Rentals		5,510.00	5,510.00	66,935.00
Stationery & Printing		53.49	53.49	649.01
Office Salaries & Expenses		3,070.26	3,070.26	35,250.00
Taxes		286.07	286.07	3,336.60
Insurance		489.10	489.10	5,673.19
Other Expenses		642.43	642.43	7,891.95
Discharging & Storing		4,231.71	4,231.71	65,534.14
Trimming Expenses		864.20	864.20	14,250.53
Team Expenses		2,697.53	2,697.53	34,882.43
Barge Expenses		3,186.37	3,186.37	45,835.00
Totals	160,445.18	27,000.66	187,445.84	2,344,881.82
S. S. "Thor" Expenses				126,401.83
Totals			187,445.84	2,471,283.65
GENERAL EXPENSES:			101,440.04	2,411,200.00
Gen'l Office Salaries & Exp	D.		9,843.93	77,912.86
Rentals	•		550.00	3,575.00
Stationery & Printing			79.95	607.73
Advertising			332.50	3,076.30
Excise Tax			268.44	3,221.27
Franchise Tax			291.55	1,250.00
Interest & Discount			1,334.80	17,961.11
Totals			12,701.17	107,604.27
TOTAL EXPENSES			200,147.01	2,578,887.93
NET EARNINGS: SUMMARY:	29,146.74	22,805.95	39,251.52	271,892.58
Nanaimo Net Earnings			29,146.74	207,919.10
California Net Earnings			22,805.95	182,768.25
Totals			51,952.69	390,687.35
Deduct General Expenses			12,701.17	107,604.27
			39,251.52	283,083.08
Deduct S. S. "Thor" loss			00,002.02	11,190.50
NET EARNINGS:			39,251.52	271,892.58
[1149—1090]			,	,
[

(Testimony of D. C. Norcross.)

- Q. It is suggested, Mr. Norcross, that the minutes of the company from the beginning, refer to financial statements; are these the first financial statements that were prepared, that is, for March, 1907, was that the beginning of those statements? A. Oh, no.
- Q. Where are the financial statements prior to that time?

A. Prior to April, 1906, they were burned. No monthly statements were made during 1906 after the fire, just the annual statement, a statement, I think, at the end of December, and then that was the first statement that is referred to in the minutes of the directors meetings after the fire, a monthly meeting.

Mr. ROCHE.—Q. Were you always present at the meetings of the board of directors, Mr. Norcross?

A. Yes.

Government rests.

The above and foregoing (including therein, also all exhibits which are by that certain stipulation of the parties and order of the Court hereinafter recited, transmitted in the original to the Circuit Court of Appeals for the Ninth Circuit, and by said stipulation and order made a part hereof in all respects as though incorporated at large herein) contains all of the evidence of any and every character given by the Government in opening its case and all of the procedings thus far had upon the trial of this cause. [1150—1091]

The defendant, John L. Howard, having died since the procedings last hereinabove set out, the Court at this point, on motion of counsel for the Government, (Testimony of D. C. Norcross.)

made an order dismissing the indictment as against him. Thereupon, Edward J. McCutchen, Esq., moved, on behalf of all of the defendants and on behalf of each of them, for an order dismissing the indictment as to each and all of them, and, also, for an order for an instruction to the jury to return a verdict of not guilty; and this motion having been argued by Mr. McCutchen on behalf of all the defendants, and, particularly, on behalf of the defendants, Robert Bruce and Joseph L. Schmitt, and by Samuel Knight, Esq., on behalf of the defendants, Edward J. Smith, James B. Smith, F. C. Mills and Edward H. Mayer, and by Peter F. Dunne, Esq., on behalf of the defendant, Sidney V. Smith, and argument in opposition to said motion having been made by Matthew I. Sullivan, Esq., the Court then duly made an order withdrawing this cause from the jury so far as the defendants, Sidney V. Smith, Robert Bruce and Joseph L. Schmitt, were concerned and submitting to the jury the cases of James B. Smith, F. C. Mills, Edward H. Mayer and Edward J. Smith; to which ruling and order of the Court declining to grant the aforementioned motion in respect to said last-named defendants, James B. Smith, F. C. Mills, Edward H. Mayer and Edward J. Smith, said defendants and each of them then and there duly and regularly excepted.

Thereupon, the introduction of evidence for and on behalf of said last named defendants and each of them was begun and the proceedings were as follows: [1151—1092]

[Testimony of Arthur Mullan, for the Defendants.]

ARTHUR MULLAN, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

Since October, 1911, I have been in the employ of the Western Fuel Company. I would consider that my position is now that of general foreman, in which capacity I have charge of the coal barges and of the stevedores and hatch-tenders. I have been in this particular position since about the middle of December, 1911. My duties include the discharging of the coal barges, by which I mean that I get the barges alongside of the vessel that requires coal and notify the hatch-tender to get his gang of men and to commence coaling the vessel. I also have charge of the shifting about of the barges. My predecessor as general foreman was David Powers. I succeeded him about the 15th or 16th of December, 1911. Prior to the beginning of my employment with the Western Fuel Company in October, 1911, I was employed by the Pacific Coast Coal Company, with which company I had been associated since the Black Diamond sold out to said company, which I think was in the month of May, 1904. I was first general foreman and later superintendent for the Pacific Coast Coal Company. As general foreman I had charge or general supervision of barges. From 1881 to 1904 I was in the employ of the Black Diamond Coal Mining Company as their general foreman, so that I have been employed in the coal business in San Francisco in the capacity of a general foreman almost continu(Testimony of Arthur Mullan.) ously since 1881.

At or about the time I took charge of the barges of the Western Fuel Company in December, 1911, I told the hatch-tenders to keep the tubs evenly filled. The hatch-tenders' duties are to hire the gang of men that shovel. I have nothing whatever to do [1152 -1093] with that matter. I do not suppose I am personally acquainted with more than five or six men who are working on barges. The hatch-tender of one crew is Frank Wilson and of the other crew Andrew Rookers. These are the regular and steady hatch-tenders at the present time. They were in the employ of the Western Fuel Company when I first joined the company. I have no charge or supervision whatever over the stevedores who are employed about the bunkers in the unloading and discharging of vessels bringing imported coal into the port of San Francisco. These men, I believe, are under the supervision of Mr. Schultz. In other words, I am foreman of the gangs on barges and Mr. Schultz of the gangs on bunkers. In the performance of my duties I may have to be present at the coaling of a steamer at the Pacific Mail Dock or at the Jap Wharf No. 34. I get a barge alongside of a vessel and notify the hatch-tender to get a gang of men and start in coaling the vessel. I may have more than one vessel coaling at a time; in which case, I go from one to the other during the coaling operations. I have at times observed the customs-house weigher taking weights at the Pacific Mail Dock. I have observed that they weigh four tubs at a time. The

tubs that are weighed and the tubs that are not weighed are kept as even as possible according to my observation. I have nothing whatever to do with the loading of coal into barges at the sides of the bunkers. I have no idea as to the exact quantity of coal that is loaded into a particular barge at the bunkers. I don't know whether in the discharge of a particularge barge it runs either short or over. I have nothing to do with that. I have never given instructions to those hatch-tenders to overload the tubs that are weighed and to underload the tubs that are not weighed; nor have I ever given any instructions that [1153—1094] the tubs that are to be weighed are to be filled with fine coal and lump coal mixed together, and the other tubs filled with lump coal. Nobody to my knowledge has given such instructions to the hatch-tenders. When a particular barge is to coal a vessel I communicate with the hatch-tender to get his gang of men to go to work on the barge. As to what men he shall get, I make no suggestion; that is entirely his province.

Cross-examination by Mr. SULLIVAN.

I was first employed by the Western Fuel Company through Mr. James B. Smith at the time when the Western Fuel Company purchased the Pacific Coast Coal Company, with which list-named company I was then associated as superintendent. Between October 23d and the middle of December, 1911, I was working around the yard of the Western Fuel Company. It was about the 15th, 16th or 17th of December that I gave those instructions to the

hatch-tenders to keep the tubs which were weighed and the tubs which were not weighed evenly filled. I cannot recall to which hatch-tender I first gave those instructions, nor the date, nor the time of day, nor who was present, nor on which barge the instructions were given, although I believe they were given on one of the barges. I am not positive as to which steamship was being loaded at the time, but I think it was the "Siberia." I have given those instructions to both Frank Wilson and Rooca, but I can't recall what day. The instructions were verbal. I cannot recall at what other places I gave instructions to either one of those two hatch-tenders. My life is a busy life. It was shortly after I was put in charge of the barges that I gave those instructions—a few days after. I did not give those instructions to both hatch-tenders on the same day. I could not say where I gave the instructions to the second hatchtender, nor on [1154-1095] what barge, nor what ship was being loaded with fuel at the time, nor whether anybody else was present. It seems to me that I have given such instructions more than once to one or other of the hatch-tenders, but I am not positive about that. The reason I gave instructions to the hatch-tenders to load the tubs evenly was this: Because the tubs on the occasion when the instructions were given were going up very fast, there being at the time a large space where we were dumping the coal into the vessel with consequently very little trimming to be done. I therefore told the hatch-tender to be sure and keep the tubs filled up evenly. I did

not give these instructions with reference to a particular barge that was at one time being unloaded into one of the steamships. The buckets, as I have said, were going up fast and I told the hatch-tender to load the buckets that were going up fast evenly. A custom-house weigher is always present when we are handling coal. I cannot give the name of the custom-house weigher who was present on that particular occasion, however. I don't know a half dozen of the custom-house weighers. I doubt if I know the names of as many as that. I cannot recall the circumstances under which I gave the instructions to the second hatch-tender. I do remember that the tubs were then going up fast. When I gave instructions to the first hatch-tender I had just taken charge of the barges. I think I was aboard a barge at the time. I do not remember the day of the month or the month or who was present or what barge it was or whether both hatch-tenders were on the same barge or on what barge "Rooca" was on that occasion. I did not give both hatch-tenders instructions on the same day, but, to the best of my recollection, spoke to one on one day and the other on another day. It was not because I had noticed [1155—1096] they were overloading the tubs that I told them to load the tubs evenly. It was because the tubs were going up fast and one of the tubs seemed not to be as full as it ought to be; that is why I told them to fill the tubs evenly. When I first took charge there I notified the hatch-tenders to be careful and have the tubs filled evenly. At that time Mr. Mills took me

to the barges and told me to see that the tubs were kept evenly filled. I believe I was on the "Siberia" at the time and I think that Mr. Mills gave me that instruction in December. Nobody else was present. The "Siberia" was at one of the mail docks, either Pier 42 or 44; I am not sure which. Said instructions from Mr. Mills were verbal. The hatch-tenders were not present at the time. It was within a day or two after I received said instructions from Mr. Mills, or it might have been on the same day, that I in turn gave the instructions to the hatch-tenders. In the performance of my duties I was located at different wharves, wherever the steamers that are being coaled happen to be moored. It is not my duty to see that the barges are loaded with coal. My duty is to see that the barges having been previously loaded with coal are brought to the steamships to discharge the coal. It is not part of my duty to remain upon the barges, though I am, of course, present occasionally when the coal is being transferred from the barge to the steamship. I am thus often, but I could not say how often, on the barges. I am off and on them several times a day. When I go aboard a barge I remain perhaps fifteen minutes or half an hour. It is not a fact that my duties are at an end once the barge is brought alongside the vessel which is to be coaled. It is true that the hatchtender has exclusive control of the barge when unloading, but he is under me and subject to my orders. After every steamer is finished [1156— 1097] I ask the tallyman how much coal the vessel

has taken and thus see the weight of coal discharged from any particular barge into any particular steamship.

It is not a fact that the occasion shortly after I took charge of the barges in December when I told the hatch-tenders to keep the tubs evenly loaded is the only occasion I gave such instructions. I gave the same instruction once when they were hoisting the tubs very fast and I may have given that same instruction at other times. Mine is a busy life and I cannot remember the particular times. I cannot say whether after I gave those instructions the barges discharged more coal into the steamships than the barges had received. I have nothing to do with and know nothing about the out-turn. When I said that I found out from the tallyman the weight of the coal laden into a particular steamship, I did not mean to say that I would know how much coal had been transferred from each barge, because there might be three or four barges participating in the loading of the vessel and I would simply see the summary of the weight at the end without indication as to what portion of the total coal came from each particular barge. I did not ascertain the amount of coal that was loaded into a particular barge. I had nothing to do with and therefore did not ascertain the amount of coal taken out of a barge at the time of her cleanup. It was not a part of my duty to ascertain the amount of coal that was taken out of the barges after being loaded. In answer to the question whether I know the only way I could

ascertain whether the tubs were evenly filled or not when they were weighed or not weighed was to ascertain the amount of coal taken out of the barge and compare that amount with what went into the barge, I would say the only way I would know about what the tub weighs was in observing the tub going up out of the hold; and seeing whether or not it was full. I have no knowledge as to the amount of coal that [1157—1098] was put into the barge or the amount that was taken out of her. When I visited a barge I might remain on her a half hour or longer; perhaps sometimes an hour. I cannot very well recollect; I am circulating around. I never gave instructions to the men who were shoveling below in the hold of a barge. My jurisdiction did not extend to them. They were under the hatch-tender's control. hatch-tender, however, never indicated the tubs that were to be weighed. The customs weigher did that. The customs weigher I have noticed notified the hatch-tender to put such and such a tub on the scales. He would give the order first about getting a tub weighed. As a general rule, I observed that four tubs would be weighed at a time. In answer to the question whether I have ever seen more than two rounds of tubs weighed on a particular day or on a particular barge, I would say that that was something I did not give much attention to. I would simply be passing by and notice that they were taking four tubs and weighing them; so, also, I could not be positive whether I have on any one day seen a round of tubs weighed. I didn't have anything to do with

the weighing. I could not say how many tubs I have seen weighed in this present month of January, nor whether in said present month I have seen more than a round of tubs weighed on any one day. seen them weighing a couple of times this month, but I have not stopped to see them weigh the round. Last year I saw a round of tubs weighed more than once on a particular barge—that is to say, I believe I did. I will swear positively that I saw one round of tubs weighed last year, though I could not say where. We have four barges. There were four tubs in that round. I have seen a round of tubs weighed this year. I could not specify the time. I have seen several rounds; that is, four tubs at a time weighed this [1158—1099] year. I could not tell you how many rounds, but it was more than one. It was at the Jap steamer; also at the San Juan. I did not take any particular notice as to how the tubs were filled, but they were filled apparently even so far as I saw. I could not tell you how many rounds of tubs I saw weighed on all the barges put together last year, but it would be more than two. It would be impossible for me to remain for all the rounds. I simply observed in passing from one barge to another in the course of my duty that rounds of weights were being taken. I would say that I saw such rounds taken more than half a dozen times. I simply saw the weights taken consequently, so to speak, as I was passing by. I never went there expressly for that purpose. In answer to the question whether I just happened to be accidentally on the ground and

paid no particular attention to the weighing. I would say I would observe the tubs when going on the scales evenly filled, but the tubs that were weighed were not the only ones I observed. I would also see the tubs going up that were not weighed and, of course, they were evenly filled. I have not made a statement to this same effect to counsel on the other side before I took the stand, but, of course, I talked to said counsel. I told counsel what I knew about the tubs being evenly filled. Mr. Mills told me to see that they were so filled. It is correct that I could not be on the barges much of the time owing to the diversity of my duties, but it is not true that I was seldom on the barges. I was going constantly from one to the other. When you ask me whether I know that the only way I could determine that the tubs were evenly filled was by comparing the intake of the barges with their output, I would say that I knew nothing about that and that I simply observed the tubs to see whether or not they were evenly filled. I certainly do not [1159—1100] remember the "Melrose" taking coal on June 4th and June 8th, 1912, and turning out 12 per cent more coal than she took on board, nor do I remember the "Nanaimo" taking on coal September 17th and October 9, 1912, and turning out 11 per cent more coal than she took on board; and I certainly do not know that practically every barge over which I had charge in December, 1911, and up to December 31, 1912, discharged more coal into the steamships than they took aboard.

The hatch-tender is under me. I do not give him

instructions about employing stevedores. It ought to be the duty of a hatch-tender to get the very best It is not a fact that the amount of work men he can. and the character of the work which the shovelers in the hold do is determined by the amount of coal taken into the hold of the vessel or from the barge at a given time. It depends on the conditions; conditions being right, the value of the service rendered by the shovelers is determined by the amount of coal which they shovel during a given time, always provided, of course, that there is a good large opening to dump the coal into, and that is not determined by the weight of the coal taken altogether out of the barge within a given time. The conditions are so contrary in that line of work and sometimes you will get a run of work on a vessel for one or two or perhaps three hours, as the case may be; then the coal gets blocked up and the men have to clear away the coal, and then they cannot do such good work. I do not get the weight of coal taken from the barge at a certain time from any particular person. I may ask the tallyman how much we did for the day. It is my duty to ascertain how much coal has gone into the vessel during the day, but it certainly is not my duty to ascertain the total amount of coal unloaded from a barge into any particular ship. I do not get [1160-1101] these weights simply through curiosity. I turn them into the office. It is my duty to turn the results for the day's work into the office. I do not get the total amount of coal taken from any barge and put into any ship. I may or may not know the amount of

coal that has been taken from the barge. All that my duty requires me to know is the day's work. I get no slip from the hatch-tender on the work of the day; no written memorandum from him. I make a report to Mr. Mills showing the amount of coal discharged during a day and that is the end of my duty. The report is usually verbal. I believe Mr. Hopkins kept the books of Mr. Mills while the latter was away. I never made any entries myself in those books. to the question how often I would call on Mr. Mills during my service from December, 1911, to the present time, I would say that I would sometimes call on him once or twice a day; sometimes I would not see him for a whole day, but would telephone him. never took the weights in writing to Mr. Mills' office or to Mr. Smith's office, or to any other office. Mr. Mills happened not to be in his office I would make a memorandum on a piece of paper and leave it in his office; if he were in his office I would tell him orally. That has been my practice up to the present day. I would repeat that I was never curious to ascertain whether the coal that came off any particular barge exceeded or equalled the coal that went into that barge.

Redirect Examination by Mr. STANLEY MOORE.

It was from the tallyman and not from the hatchtender that I used to get the weights for the day.

The hatch-tender had nothing to do with that matter.

[1161—1102]

[Testimony of Frank Wilson, for the Defendants.]

FRANK WILSON, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I have resided in San Francisco all my life. I am a stevedore by occupation. At present I am in the employ of the Western Fuel Company and have been with that company since they bought out John D. Rosenfeld about ten years ago. Before that I was foreman or hatch-tender for Rosenfeld who operated the barges "Theobold," "Nanaimo," "Ludlow," "Corsair" and "Melrose." I worked for the Rosenfelds something like six years. I have been hatchtender for the Western Fuel Company during the entire period of my employment with them. I employ the gang or crew that does the shoveling of coal on the barges. The crew is composed of eight men in the hold, the engineer and myself, and, on one barge, we have two dumpers, that is the "Theobold"; the other barges are all self-dumpers. The instructions that I give to the shovelers are that the buckets are to be kept even at all times. I never have given instructions to the men to overload the buckets when weights are to be taken and to underload them when weights are not to be taken. I have not given instructions to men to go into the fine coal or mix the fine with the lumps when weights are to be taken. When I say that when the tubs are filled they go onto the scales whether they contain fine or lump coal, I mean that when the custom-house officer orders us to take weights I have to put the tub on the

scales whether it contains lump or fine coal. When a barge is loaded, the fine coal is amidships; that is in the center, and the lump coal is in the wings. When weights are called for the shovelers put in whatever coal happens to be in immediate proximity to the then location of the buckets. In other words, they fill the tubs with [1162—1103] whatever coal may be handiest. I do not know when the customshouse officer is going to take weights. The weights are called for about every hour, and, if things are going lively, perhaps every three-quarters of an hour. Perhaps the customs weigher will take a round of weights one at a time; at other times the whole four. Generally he weighs four tubs at a time, but that is not the universal rule; it depends upon the particular weighers. My experience, both with John D. Rosenfeld and with the Western Fuel Company, is that as a general thing one tub in fifteen or four in sixty are weighed. As to the number of tubs weighed at the same time, sometimes it is four, sometimes two, sometimes three and sometimes one. I presume they weigh four the oftenest. When I say that weights are sometimes taken every three-quarters of an hour when things are going lively, or according to how fast things are going, I mean that when we start a job they have a bigger space in the bunkers, and, of course, when the pile comes up it don't go so fast and you have to allow time for the trimmers inside the bunkers of the ship to get the coal away; that causes delay. When things are running lively, about 90 or 100 tubs an hour will go up on the "Theobold,"

while the "Comanche" or the "Ruth," having bigger tubs, don't send up so many. When things are running slow, as for instance when we are finishing off a bunker, about 40 or 50 tubs an hour will run up. When the tubs are running lively the custom-house officer calls more often for weights than when they are running slow. I have no way of telling when a custom-house officer is going to call for a weight. When he does say that he wants a round of weights I have to give the engineer a signal that the tubs are going on the scales. I give this signal by hollering out on all the barges except two; on those I use a whistle. In addition to the custom-house officer, [1163—1104] the weigher or tally clerk for the Pacific Mail Steamship Company is present when we are loading the liners of that company. His name is Park. Sometimes Mr. Ed. Smith is also present, but the majority of the time he is not. We try to keep the tubs that are not weighed, as well as the tubs that are weighed, even. If a tub comes up that is not even we jog the men's memory and tell them to keep the tubs filled. When the customs officer says he wants to take a round of weights the tubs are sometimes at the pile and sometimes at the square of the hatch. By 'at the pile' I mean the tubs are being pushed into the heaps of coal on the barge. Sometimes, again, the customs officer may order us to put the next tub on the scales when the empty tub is just coming down. The tubs are all filled and that is all there is to it; the customs weigher puts them on the scales if he wants the tubs weighed. The tubs

are supposed to be kept evenly filled. Those are my instructions to the shovelers. So long as I have been working on the waterfront, whether at the time of the Rosenfelds or since the Western Fuel Company took over the business, the weights have been taken by the customs weighers with just about the same frequency as they are now taken. During the ten years that I have been with the Western Fuel Company, the men working under me have always kept the tubs on the barges even; both the tubs that were weighed and the tubs that were not weighed.

Cross-examination by Mr. SULLIVAN.

I am now, and have been for the last ten years, employed in the same capacity by the Western Fuel Company. It has always been the rule to keep the tubs even. I believe Mr. Mills first gave me instructions to that effect about ten years ago. [1164— 1105] That was at a time when we were both employed by Rosenfelds' Sons. It was always the custom to keep the tubs even. I remember distinctly getting those specific instructions from Mr. Mills when I began working for the Rosenfelds. He also gave me those instructions later on while I was with the Rosenfelds. They were given verbally. I would not say for sure, but I believe I got those instructions more than once while I was with the Rosenfelds. could not say what year, but Mr. Mills also gave me the same instructions while I was in the employ of the Western Fuel Company. I could not give the date. The instructions were not in writing. time may have been within one year or two years

after I began working for the Western Fuel Company. He told me to keep the tubs always even and to have no trouble with the customs weigher. It might have been earlier than within the last five years that Mr. Mills so instructed me. I know it was always my duty to see that the tubs were filled evenly. I could not say how often, but I know Mr. Mills gave me instructions to keep the tubs even at all times. I have been talking lately with Mr. Mills, but I never spoke a word to him in regard to the matter on which I am now testifying. I have never spoken to Mr. Smith in my life, nor have I spoken with anyone else in regard to this case except Mr. Moore. I went to his office last Saturday and told him I had received instructions from Mr. Mills that the tubs were to be loaded evenly. I believe that is the first time that I ever talked to any living human being about those instructions. I don't remember whether or not I told Mr. Moore the time when I received those instructions from Mr. Mills. I remember distinctly that Mr. Mills told me not to have trouble with the customs weighers and I never did have any with them that I know of. [1165—1106] If things are going lively they will weigh tubs about once in an hour or once in three-quarters of an hour on my barge. I call 75, 80 or 90 tubs an hour lively hoisting on the "Theobold." We sometimes, but very seldom, go over a hundred. I work upon all the barges. A round of tubs is taken about once in fifteen or four in sixty tubs. Sometimes while the tub is coming down the customs weigher will tell me

to put the next tub on the scales. I tell the engineer. I sing out to him to put them on the scales. On one large barge, the "Theobold," I have to call two men up from the hold to give a hand in helping to put the tub on the scales. On the other barges, also, where they have platform scales, they have to call up one man for this purpose. When the wing man or the center men are coming up from the hold, the rest of the shovelers are sometimes filling up the tubs; on other occasions the tubs happen to be already filled. The tubs that are to be weighed are not at all times already filled. They may be either filled or getting filled. If they take them when they are in the hatch they are filled.

I do not take account of nor know how much coal is put on the barges that I have charge of. I never take a record of the intake of the barge; nor do I ever take note of all the coal that is taken into the barge and loaded into the ship. I have no knowledge at all of the difference between the intake of the barges and the outgo of the barges. Mr. Mills never told me, after giving me the instruction above referred to, that the tubs were not kept evenly filled, nor that the barges turned out more coal practically all the time than they took aboard. He never complained to me about overages on the barges, nor about shortages. He never came to me and said: "Here is a case where there is an excess of 40 per cent in the amount of coal discharged [1166—1107] from the barge over the amount that went into the barge." Nor did he ever say, "Here is a case where

200 tons is left in this barge more than went into it." No complaints of any kind were made by him to me concerning any overages or concerning any shortages.

Redirect Examination by Mr. MOORE.

When I said that sometimes when weights were to be taken the tubs were all in the hatch, I meant that the four tubs were then full and ready to be dumped into the bunker of the ship. At other times, of course, the tubs might be at the piles of coal getting filled.

I know Tony Bellish. He worked for me quite a while. He was a very good man. He would keep his tub filled at any stage of the game, no matter where the tub was—whether at the lump coal or the fine coal, because he was a very good coal shoveler.

I never winked at the men down in the hold of the barge when a round of tubs was to be taken. If the coal was right in the middle of the hatch the men would be about twenty-five feet away from me. If they were working at the end of the pile they might be a couple of hundred feet away. They have their backs turned to me anyhow as they fill the tubs.

In the winter-time, or after rains, the coal is pretty wet. The men's feet get wet from working in it. In the summer-time the boatswain of the steamer, while washing the deck down, is accustomed to play the hose on the coal in order to lay the dust so as to avoid dirtying the steamer. He uses a five-inch hose. The foreman of the bunkers of the steamer also puts water on the coal in the summer-time so that the dust will not choke [1167—1108] the men who are

working in the bunkers. The water is put on the coal while it is still in the barge because if the coal is dry and dusty and goes into the bunkers that way there is no chance for the dust to escape. On the big steamers where the chutes into the bunkers are high the coal may drop 60 or 70 feet into the bunkers, but in most cases the drop is not so far. This matter of wetting the coal down during the summer months is of frequent occurrence. The trimmers would refuse to work if the coal were not wetted down. The trimmers are the men who stow the coal in the bunkers of the vessel.

Recross-examination by Mr. SULLIVAN.

Tony Bellish was a very good shoveler and always carried out instructions and was honest, faithful and obedient to orders. The water was discharged on the coal in the summer-time between six and seven o'clock in the morning when they were washing the decks down. The custom-house weigher would be present at the time. I have seen him there on such occasions. They play the water on the coal maybe fifteen or twenty minutes at a time. It would be a five-inch hose. I believe the water is pumped from the bay. The coal is also wetted down in winter-time if it happens to be dusty. They are not putting water on the coal now because rain is so plentiful. I have myself at times been in the bunkers of the ships. The men do not play the water on the coal after it has got in the bunkers. That is always done on the barge. I would protest to the Pacific Mail Steamship Company playing the hose on the coal if they kept it up

too long, for the simple reason that the water would run through the coal and come out on the skin of the barge and then the men would get their feet wet. The tubs are not water-tight. [1168—1109]

Redirect Examination by Mr. MOORE.

I did not ever give Tony Bellish the wink while he was working under me.

[Testimony of Andrew Rocca, for the Defendants.]

ANDREW ROCCA, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I live at 548 Third Street and work for the Western Fuel Company as hatch-tender, and have so worked about two and a half or three years. Before that I was a coal shoveler for about five years with the same company. Before that I worked as fireman for five or six years on the steamers of the Oceanic Steamship Company. I know Ed. Powers and David Powers and have worked under them while I was coal shoveler and they were hatchtenders. They gave me instructions to keep the tubs even as much as I could. Ed. Powers told me that; also, Dave Powers. Neither of those Powers brothers ever told me at any time to overload the buckets that would be weighed and to under-load the buckets that were not to be weighed. Nor do I remember either of them ever telling me at any time to go into the fine coal when weights were to be taken and at times when weights were not to be taken to load the buckets with lump coal. I also worked under other

(Testmiony of Andrew Rocca.)

Fred Beale, Dan Pallas and Frank Wilson. They gave about the same instructions as the Power boys to the stevedores, namely, to keep the buckets even full. As hatch-tender myself for about two and a half or three years, I have told the shovelers the same thing, and, while I have been hatch-tender, the buckets always have been kept evenly full. [1169—1110]

Cross-examination by Mr. SULLIVAN.

I am now and have been for a good many years employed by the Western Fuel Company and get good wages. Whether the barge I have charge of frequently turns out more coal than it receives, I do not know. I know nothing about that. I never heard anything about it. I have never heard that my barge turned out 100 tons more coal than went into it. I have never heard any complaints on that score. Nor have I ever heard that my barge turned out less coal than went into it. I have not received complaints upon that score either. Mr. Mills seldom talked to me. He never has given me any instructions. Nobody else ever told me that the barge I had charge of was turning out more coal than went into it. Eddie Powers was hatch-tender in 1906 or 1907. was with him four or five months. It was while I was working for him that he gave me instructions to load the tubs even whether they were weighed or not weighed. He gave me those instructions just a few times. It is a fact that the instructions were given when the custom-house weigher was right there looking on. It is not a fact that he ever told me, "Here

(Testmiony of Andrew Rocca.)

comes a certain custom weigher; he is an honest man; look out for him; load your tubs even." He never told me such a thing as that. He did give me instructions to keep the tubs even when I was working there. I didn't leave any time to look if the customhouse officer was close or not, as well as when they were present. When Eddie Powers gave me those instructions, I was keeping my tubs even. I was coal shoveler at the time and had been for a long time theretofore. I was under Fred Beale and Dan Pallas before Eddie Powers became my hatch-tender. Those men also gave me instructions a few times to keep the tubs even. It is not a fact that the instructions were given when a custom-house officer was complaining. I never heard a custom-house officer complain about the tubs not being evenly loaded. When I was hatch-tender the custom-house weigher sometimes made a complaint about [1170—1111] the tubs coming up full with a little cone on top, in which case, he would order the tub to go up without being weighed. When a tub is to be weighed I as hatch-tender, always see that it is just even and filled to the top even. When I was a coal shoveler I always loaded the tubs that were weighed full, even with the top, and I always saw that they were so loaded when I was hatch-tender. I never saw a tub of coal weighed where the coal came above the top and made a sort of cone thereon. Tubs if filled above the top would not be weighed by the custom-house officer who would not stand for an overfilled tub. That is the reason the tubs were not overfilled, and

(Testmiony of Andrew Rocca.)

the further reason is that it is not right to weigh tubs like that. I have heard the custom-house officer say, "Here, you shall not weigh that tub because the tub is more than full; the coal is heaping up above the top of the tub." I heard him say that just a few times, both when I was shoveler and when I was hatch-tender. In such cases the tub would be sent right up without being weighed.

Redirect Examination by Mr. MOORE.

Whether the four tubs are already full and waiting when the custom-house officer calls for a round of weights depends on the way in which the work goes. If it goes slow the four tubs are ready in the hatches. If it goes fast the men can't get the four tubs in the hatches and the most that goes up is two. I do not know when the custom-house officer is going to call for weights. I never winked at any men down in the hold of the barge to indicate to them that the custom-house officer was going to call for a weight. A man working down there works too hard to look for winks. [1171—1112]

Recross-examination by Mr. SULLIVAN.

I have never told Mr. Smith, or Mr. Mills, or Mr. Howard, or Mr. Moore, or anybody else that the tubs that were weighed were filled in the same way as the tubs that were not weighed.

[Testimony of A. J. Schultz, for Defendants.]

A. J. SCHULTZ, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. KNIGHT.

I have for eight years been stevedore for the Western Fuel Company. I am foreman of the stevedores. Prior to that time I was for eleven years stevedore for the Southern Pacific Company unloading coal from vessels at Port Costa and Oakland Long Wharf. but not on this side. As foreman of stevedores for the Western Fuel Company I have had charge of unloading coal steamers and loading barges and storeships. The performance of my duties takes me all around the plant of the Western Fuel Company. I have unloaded coal for them at Folsom Street, Little Howard Street, Vallejo Street and Green Street. We had top scales at Green Street, Folsom Street and a part of the time at Vallejo Street and at Mission Street. We ceased using Mission Street I think two years ago. Where there are no top scales we had to land our tubs on platform scales to suit the weighers. The tubs were hoisted and then, after that, weighed on top of the bunker. One tub in fifteen would be weighed by the United States Custom-house Weigher. To my knowledge there was no difference made in filling tubs that were to be and were not to be weighed, respectively. My orders to the men under me were that all the tubs were to be filled even regardless of whether they were or were not to be weighed. I would then go around, and, so far as I

could observe, the instructions [1172—1113] carried out. At Mission Street and Folsom Street bunkers we simply loaded our tubs and hooked them on the hooks and dumped them into the hoppers on top of the bunker. Each hopper had four outlets, of which two were commonly used. I used to warn the men whenever I saw the cars overloaded. them I wanted the cars so loaded that no coal would be spilled. It was inevitable, however, that some coal would be spilled nevertheless. We use movable platforms when we are discharging a ship. Such a platform is placed under a hopper which is in operation. That is done at my direction. I do not recall any instance where my directions in this regard were not carried out. If some coal happened to overflow the cars, as for instance when a chunk of coal would block the chutes leading from the hoppers, we would gather the overflow into a little pile and shovel it into the next car that came along. I had one man and sometimes two men stationed on the bunkers for this express purpose. The gates to the hoppers are operated by air pressure requiring at least 80 pounds. If a lump gets caught in the gate or chute we jump up and remove the lump as quickly as we can. My duties cover not only supervision of the unloading of steamers, but, also, supervision of the loading of barges. The method of loading a barge is this: we run our coal down to what are called the offshore pockets which are receivers holding all the way from 50 to 70 tons; then we have an endless chute or conveyor operated by electricity which we bring along

to the particular hopper we wish to empty, and convey the coal therefrom into the barge. The chute runs along on the offshore side. It is stationed on the end and swings around on a track by the offshore bunkers, so that it can be put directly by whatever pocket we wish the pockets being numbered from 22 to 1. The engineer [1173—1114] moves with his chute, stationing himself on a little platform. When I get orders to load a barge (and such orders come directly to me from Mr. Mills), I place a barge at the pocket at which I wish to operate and give the man instructions to go there with his coal. Sometimes I receive from the man on top or from Mr. Mills himself the number of the pocket which he wishes to empty, this information being given to me verbally or perhaps on a scrap of paper. The man on top to whom I refer is Mr. Mayer. As to the contents of the barge I could guess within 50 tons of what she is taking on board by her displacement or draught, but I cannot make this guess as to more than two or three of the barges. I don't know the contents of the pockets I am unloading. If I wish to know, I would have to inquire of the weigher or Mr. Mills. Sometimes when I am told to empty a certain pocket I am given also the number of pounds in that pocket, but not always. Once the barge is loaded, I am no longer responsible for the coal that goes into her. I do not follow her any further. As to the question whether when the barges come alongside the offshore bunker to be loaded there is or is not any coal aboard, I would say it is very rarely

that I have seen a barge cleaned out. She almost always has a little coal aboard.

The barges are discharged by buckets or tubs. We unload the steamers by a similar kind of bucket or tub. At Mission Street and Folsom Street the buckets used in unloading a steamer dump themselves automatically, and that is true, with one or two exceptions, of the barges also. I have never seen a bucket dump itself that is loaded less than up to the water line. When a bucket is so partially filled, which occurs occasionally in finishing up a vessel, it is necessary in order to get it to dump to take the coal from the back and bring it towards the mouth so as to make the latter heavy and the former light. These tubs have [1174—1115] a long lip inside. The mouth comes out at an angle of 30 degrees; the back of it is half-oval shape; then we have what is called a bail that the hook goes on to elevate the tub, which bail is fastened on the side with two pins. From the bail there is a latch projecting to the back of the tub and going in a roller pin which holds the tub in balance. The bucket therefore discharges more easily if it is very full. There is always trouble with the discharge if the bucket is loaded below water measure. If such a partially filled tub goes up, we have to send a man up to dump it by hand and that may take five minutes, thus causing us a considerable loss of time.

Except in a couple of cases, the buckets on the barges are operated on the same principle as on the vessels I have just described. On two barges the tubs

are dumped by hand. I have had occasion from time to time to observe the manner in which the buckets on the barges are filled. I have never noticed any difference in the contents and quantity of coal in buckets that were not weighed on one hand and in buckets that were weighed on the other. As to the capacity of the barges, the "Ruth" would carry 650 tons, the "Nanaimo" 850 to 900 tons, the "Comanche" about the same as the "Nanaimo"; the "Melrose" 1050 tons and the "Theobold" 1150 tons. I can give the approximate dimensions of some of the barges: the "Nanaimo" 200 feet long by 32 or 33 feet wide; the "Comanche" 200 feet long by 36 feet to 38 feet wide; the "Wellington" about 240 feet by 38 feet, the "Theobold" something less than 200 feet by 35 feet, the "Melrose" about the same as the "Theobold." The towers on the barges are stationary. About one-third of the "Wellington" is given up to her hold. The tower is a little aft of the center. On the "Wellington" the bucket would have to travel between 70 and 80 feet in order to receive its load of coal [1175-1116] after it had reached the hold if the center of the barge had been cleaned out. Sometimes coal lies a considerable time in these barges. It all depends on our business. If we are not rushed a barge may lay there loaded with coal for a month. Some barges are used more frequently than others because they are handier to operate. Other barges are used as store-ships. Oh, yes, I have known of accidents occurring to men in the hold from coal falling down from out of overcrowded buckets. In such

cases I have personally told the men in the hold to fill the buckets only so full as would be safe. They would then be filled a little over the water measure. That is safe. By water measure I mean a line drawn from the lip right to the rim of the tub, from front to back.

Cross-examination by Mr. SULLIVAN.

I have been steadily employed eight years by the Western Fuel Company and I am satisfied with my wages. It is part of my duty as head stevedore to go to all the different parts of the plant. I superintend the discharge of vessels that bring imported coal to San Francisco. When a ship is discharging into the bunkers at Folsom Street or Green Street or Vallejo Street, as the case may be, I am part of the time aboard ship for a whole hour. When a ship is discharging I am aboard her at least once a day. At Folsom Street I would sometimes be aboard the ship an hour, and, again, I would be on the wharf and observing the unloading from that station. I am aboard for an hour and then I go ashore for ten minutes and then I go aboard again, and so on back and forth. Where we have no scale on top of the bunker we weigh the coal aboard ship. There have been bunker scales at Folsom Street, however, ever [1176—1117] since I have been employed by the The Mission Street bunker was discompany. mantled, I think, two years ago, and since then the most of the imported coal has been weighed out at Folsom Street. A couple of years ago we did very little at Folsom Street. I think we stopped operat-

ing the bunkers there for a whole year. That was 1911. I could not say that most of the coal was unloaded at Folsom Street except for that one year, because we had coal coming also to Mission Street. When a ship is unloading at a bunker I also go onto the bunker; sometimes twice in the forenoon and sometimes twice in the afternoon. My purpose is to see that everything is going on right. There is never a day goes by when I am not on my job. I probably stay on the bunkers on such visits fifteen or twenty minutes. I go right out to the end of the bunker and back again and I look in here and there. I generally found that everything was going all right in the discharge of the ship. In addition to my duties in connection with the discharge of imported coal from vessels, I attend, as I said before, to the loading of the barges. My duties are not restricted to any one bunker; sometimes two or three bunkers are in operation, but not very often. In such cases I go from one to the other. I have nothing to do with the discharge of barges into ships.

Referring now to the tubs used in discharging a vessel of imported coal, I have not seen a tub three-quarters full discharged on one of the automatic dumpers. The tubs that I operate don't do that; they must be full. I know it is to the interest of the company to fill the tubs full at the time they are discharged from the ships into the bunkers, and I take care that they are filled, but I see to it that they are not over-filled because I do not want the coal to topple over on anybody's head. The coal [1177—1118]

all goes into the cars from the hoppers and is conveyed to the scales where it is weighed. I have of course had experience in discharging coal from ships into vessels alongside. That belongs to my department. The tubs in such cases are loaded as even full as possible. I don't allow tubs three-quarters full to go overside. At Vallejo Street and Little Howard Street we have no top scales, and, if a ship comes in there, we have to put our scale on her deck. We fill up the bunkers at those docks whenever occasion requires it. The custom is to weigh one bucket in 15 on the ships. I have always seen them weighed that often. I am sure of it. It is optional with the custom-house weigher to weigh four buckets in sixty. I don't know how often I have seen four tubs in sixty weighed instead of one in fifteen. I have seen it once in a while though. The more frequent practice is to weigh one tub in fifteen.

I received instructions to fill all the tubs even. By that I mean that the tubs should be a little over water measure. The instructions were given me by the superintendent when I first started to work. I got those instructions the very first time I commenced to work offshore. Mr. Mills gave them to me. I remember the occasion. He was standing right alongside of me when I said to the foreman, a new man, to keep the tubs as even as possible to avoid trouble with the weigher. Mr. Mills was standing alongside and he said: "That is right; those are the instructions." The occasion was several years ago. I don't know what vessel we were then unloading;

I do not remember the name of the foreman to whom I was talking. There was a weigher on the barge then as there always is. Answering the question whether Mr. Mills ever gave me instructions more than on that particular occasion, I would say that one instruction is enough for me as long as \[\int 1178— 1119] I work for the company. When I was discharging coal from the pockets of the bunkers into my barges, Mr. Mayer would tell me how much coal was in the pocket if I requested him. He gave me generally on a blank card the number of the pockets. Sometimes Mr. Mills does that. Sometimes they also give me a memorandum showing the amount of coal I am to discharge; sometimes they do not. It is very seldom that I receive such a memorandum, however. We have a certain book relating to the offshore pockets showing the amount of coal in each pocket. I could see that book if I asked for it. It is kept either by Mr. Mayer upstairs or in the office. Mr. Mayer usually keeps it upstairs because he makes notes in it as he fills the pockets. I have also seen that book in the weighing office and have seen Mr. Mills take it up occasionally to look for certain pockets.

I have been on the bunkers when the cars were loaded. When we are discharging a ship I make my rounds of the bunkers and the cars are loading all the time and I am right close to them. I have very seldom seen the cars overloaded so that the coal would fall down onto the deck of the bunker. The man that operates the cars also operates the lever

that opens the chute discharging the hopper into the That is the motorman. They use movable planks on the bunkers. There is a certain hole between the tracks and we make the platforms to cover that hole. The platforms are from ten to twelve feet long and 2½ to 3½ feet wide. The platforms are very easily removed by two men. We have some spare platforms that are sometimes alongside of the bunker. The regular platform is always down. I have seen the spare platform lying alongside the bunker while the coal was being discharged from the ship into the bunkers. We have three or four such spare platforms. When the cars are being loaded the platforms are always [1179—1120] down. I have never seen the space open and the platforms away at a time when a ship was discharging into the hoppers or the hoppers were discharging into the cars.

There is practically always some coal in the barges. I guess it is only three or four times that I have seen a barge scraped out. I have nothing to do with that myself, however, but I have occasion to observe every time a barge comes to be loaded that she has coal in her, with the exception of the three or four times I have referred to. Sometimes they have half or three-quarters of a load. I go aboard a barge whenever she comes for a load, and, when she is pretty nearly loaded, I also go aboard to size her up. I don't go aboard until she actually gets alongside the bunker. I never go aboard a barge when she is at the Pacific Mail Dock discharging into a steamer.

Such knowledge as I have of the manner in which the cargo is discharged into the Pacific Mail Company's ships is derived from my incidental observation and not in the course of my duties on the barges. I make such observations from the dock or from a steamer alongside the barge.

The full capacity of the "Nanaimo" is from 850 to 900 tons. She would not sink if a couple of hundred tons more were placed aboard because the load I have given is her regular load. She can carry more, but we do not wish to overload her on account of stress of weather. Years ago I have put as much as 1050 tons on the "Nanaimo." My orders are, however, to load her now to her winter capacity, that is, 850 tons. In summer she can carry, as I have said, from 200 to 250 tons more. When summer comes on I sometimes get orders from the superintendent to load her down to her summer mark. The capacity of the "Ruth" is 650 tons. She is an old barge and it would be dangerous to give her more. I think 735 tons is the most I have ever placed aboard her. We do not distinguish between summer and winter loads for the "Ruth." [1180-1121] The "Comanche" has the same capacity and is treated in the same way as to summer and winter loads as the "Nanaimo." The "Melrose" can pack 1050 tons summer or winter. If we are jammed for space we may put more on board her. She used to bring 1500 tons from Seattle years ago. 1150 tons is now her normal load, but I would not be afraid to put 1400 or 1500 tons on her. I have put 1200 tons and over on

the "Theobold," but we usually confine ourselves to 1150 tons as to her. When told to load her up I have put as much as 1250 tons aboard her. When she is loaded down to 22 feet and carrying 1250 tons, she has freeboard enough to go around the Horn if she were safe and sound, but she is an old boat now. The summer and winter loads of the "Wellington" are alike, 1600 to 1800 tons.

Since this trial commenced I have never talked with Mr. J. B. Smith nor with Mr. Mills nor with Mr. Ed. Smith about my knowledge of the fact that the tubs that were weighed and the tubs that were not weighed were always loaded even. The attorneys in this case asked me about the matter and I answered them just as plainly as I have answered you.

Redirect Examination by Mr. KNIGHT.

We have at times loaded out barges with coal from the yards across the Embarcadero. If we have a low barge on hand or barge with an apron we run the coal across in our wagons. The "Comanche" and the "Nanaimo" are low barges. We have thus run coal across the streets in wagons and onto the barges at times when we had no steamer alongside the bunker or did not have on the dock itself the kind of coal that we wished to put in the barge. I do not know whether the coal that is hauled across the street and thus dumped into low barges is weighed or not. Occasionally the coal [1181—1122] from the yard which is hoisted and run across the tramway to the offshore pockets is weighed, and, again, occasionally, it goes right down to the barge without being

weighed; but, in the latter case, they keep tally on each trainload. Thus when there is no weigher present the only way we have of keeping track of the quantity of coal thus removed from the yards is by the number of carloads dumped into the pockets and afterwards into the barge.

When we are unloading a steamer of imported coal, I have in the hold of the steamer a crew consisting of the foreman and eight men below, the foreman on deck and the engineer on the bunker. That is the arrangement for each hatch. If we have the the room, we operate four buckets to each hatch. Some of the steamers contain three hatches instead of four and some of them have as many as six. As near as I know, a shovelful of coal weighs 20 pounds. We usually put screenings in with the lump coal in the offshore pockets so as to make an average. There is a screening bin on the lower end of the bunker and we have a belt running from a given point there to which our trains go to get the screenings so as to convey them to the offshore pockets. I have many a time seen cars crossing over the switch with screenings and I don't know whether they had been weighed or not. It is not necessary to run the cars containing the screenings over the scales if the man gets orders not to. By means of a switch there and two uprights we are thus able to operate the screenings cars without interfering with the regular process of weighing the other cars. other words, we can get to the offshore bunker by means of that switch without going near the scales

with our screenings cars. We can only open this switch by taking out a 10 by 10 beam which supports a hopper. This beam can be [1182—1123] removed whenever we are not using that particular hopper. When we have a ship which is long enough to necessitate the use of all the hoppers, or, when the hatches of the ship are so situated as to require the use of that particular hopper, we have to keep the beam in.

Custom-house officers come up and down frequently and aboard the ship when she is being unloaded of imported coal.

Recross-examination by Mr. SULLIVAN.

The "Melrose," "Theobold" and "Wellington" are high barges, while the "Nanaimo" and "Comanche" are low barges. The latter, as I have said, are sometimes loaded with coal hauled to them in wagons from the yard. The high barges cannot take coal from the wagons except by an apparatus with which they are equipped. We have not discharged any coal from wagons into barges this month. I really don't know how often we did so last year. Whenever we had no coal on hand at the bunkers. but had some in the yard, we used it. We did so last year. We had three or 4000 tons of coal in the yard that year and we must therefore have loaded five or six barges that I know of. I don't know how often I saw wagons going across with these loads. It is not a rare occurrence. One winter we had lots of coal loaded by means of a boom from the yards into the high barges. We have often loaded the high

barges that way. The wagons are regular coal carts with an estimated tonnage of a ton or over. I couldn't say whether the coal was weighed before it went into the barge, because I don't handle those teams. Nobody told me the quantity of coal in the wagon when the wagon came to the barge; nor did I make a memorandum thereof. I don't bother my head about the quantity of coal that comes in that way by the wagons. [1183—1124] I don't keep a memorandum of the quantity of coal that goes into the barge. Our office people attend to that. If the coal comes over in a tub and is weighed in while we are discharging, Eddie Mayer is the man who keeps track of the quantity. In answer to the question who keeps a record of the tonnage of coal that goes into a barge by way of wagons, I would say Mr. Miller handles the teams. The screenings are kept on the north side of the bunker in a bin and on the inshore side. There is no way of loading the screenings from the bin into the vessels alongside the bin. The screenings have to be first put in cars. They go into the cars by an endless belt. In answer to the question whether I have ever been on the bunker when coal was being dumped into the bunker and no customs officer present, I would say we never operate the ship unless there is a weigher there. however, occur that we bring coal from the yard without having a weigher present. In such cases I am instructed to go ahead and keep tally of the trains that come down and I tell the motorman in turn to keep that tally. That would occur when we had no

coal on the bunkers. It occurred half a dozen times last year. I don't know how often the year before. I cannot answer your question as to how often that has occurred in all in the last eight years, but I do know that we have several times had the yard full of coal and that we hoisted it out of the yard and dumped it into the offshore pockets and barges.

It is a fact that when a ship is discharging imported coal a record is kept of every carload that is taken off said ship and dumped into the offshore bunker. It is all weighed.

[Testimony of W. R. Olinder, for the Defendants.]

W. R. OLINDER, a witness called for the defendants and sworn, testified as follows: [1184—1125]

Direct Examination by Mr. STANLEY MOORE.

I am now and have been for the two years last past residing in Berkeley. Formerly I resided in Alameda, and before that in San Francisco. I have been following the blacksmithing trade for 45 years. I am now and have been in the employ of the Western Fuel Company since the organization of said company. I am blacksmith and machinist. I am responsible for fixing anything that goes wrong in the entire plant, including the bunkers, yard, conveyors, belt, motors and hoists. I used to work for the Rosenfeld Company. I and my helper, Mr. Ewing, make the links that couple up the cars that are operated on top of the company's bunkers. I make most of them. Formerly the company had two bunkers, one at Folsom Street and the other at Mission Street. Whenever I start in making links

I make half a dozen so as to keep them on hand. make them perhaps two or three times a year. remember an occasion when a custom-house officer complained to me that there was something the matter with a coupling up of the cars. That was five or six years ago at Mission Street. The cars stopped running and they sent for me to come down and see what was the matter with the scales. I could find nothing the matter with them. I told them they had better get someone from Fairbanks-Morse to examine the scales. Fairbanks-Morse sent a man out. There is an angle-iron about 2½ inches by one-half that holds the drawhead that hooks the two cars together. The link was all right, but the angle-iron had come in contact with something and had got bent or twisted and I saw that I could not put the link back again, so I made three new links out of an old chain, so that they would have free play to get clear. After that they were all right. It was in the middle section of the train that the drawhead was bent. They continued to operate those particular cars with the three links I had put in [1185—1126] until I had time to throw that car out. I don't know when that was, but I made the repair on the car and put a new angle-iron in there and paid no more attention to it. The chain was used for quite a while. In response to the question whether by reason of the twisting of the drawhead there would be any tension caused while any of the cars were on the scales, I would say ves, that when I saw the drawhead was down I could not put the link back again, and, in order to get it

free, I had to make the chain quick so that is why I got the three links that did the trick. As to the comparative sizes of the drawheads used at Mission Street and Folsom Street, respectively, I would say that those used at the latter bunkers would make four or five of those used at the former. The Mission Street cars were very frail cars, while at Folsom Street the cars were heavy. Sometimes the cars run off the tracks on the bunkers four or five times in a day, sometimes two or three times in an hour. They run the cars pretty lively and pretty carelessly. The cars don't get clear off the track; they get lopsided so that half of the car goes off and all out of shape. Those accidents will not happen every day and there may be a period of a month without such an accident, and then there may be three or four such mishaps in a day. The cars have gone off the tracks many times the last year. Inside the last month three or four cars went off. As to the effect on those light drawheads at Mission Street of such a mishap, I would say it depends on how the cars went over. If one car is on the track and the other half off, it gives a kind of a twist; the rail sits on a 12 by 12 and there is nothing on the bottom, and when the car gets off there is nothing to hold it up, so that the car is left hanging in the air by the drawhead. I should judge the links I made for the Mission Street cars were 9 to 10 inches [1186-1127] long by fiveeighths. They were made of Norway iron, because that iron stands more resistance and would bend quicker. If the links were made out of poor iron

they would break. The links at Folsom Street, I make out of 7_8 iron about 12 to 15 inches long. If I find a cross-head that is a little up or down, I put an offset in it to meet the other cross-head. By cross-head, I mean the drawhead of the car. I want to give plenty of room by this offset so as to avoid any trouble on the scales and so everything would run free. I have never at any time since I have been working for the Western Fuel Company made a single link that was intended to give that company the best of it in weighing on the scales.

Cross-examination by Mr. SULLIVAN.

It was five or six years ago that I found the defective link to which I have testified. I can't give the exact date and I can't even swear as to whether it was before the earthquake and fire of 1906. The incident occurred on the Mission Street bunkers. am perfectly sure it was not at Folsom Street. There was nothing the matter with the link. Everything I made there was perfect. The trouble was with the drawhead which was bent, or, rather, it was the angle-iron that holds the drawhead. It was kind of twisted. I do not know how long it had been in that condition. A custom-house officer had made complaint about the weighing on the day I was called up. He did not say the trouble was with the angleiron; he simply said there was something wrong with the scales; he didn't know exactly what. I did not notice that the scales did not weigh correctly. I simply took his word for it. I don't know anything about the scales except what they told me, which was

that the scales were out of order. Whether the correct weight could be taken or not, I [1187—1128] don't know. The custom-house officer present, I think, was Mr. Murray.

- Q. Do you remember any occasion when there was some complaint made about defective weighing on the Folsom Street bunker by reason of some defect in the link?

 A. In the link?
 - Q. Yes. A. That the scale hangs on?
- Q. No, a link which connects the second and the third car?

 A. I don't know anything about that.

Mr. STANLEY MOORE.—I think, Mr. Sullivan, your testimony shows that it is the Mission Street bunker. I think there is no question about that.

Mr. SULLIVAN.—No, both Mr. Freund and Mr. Delaney said that on one occasion there was a defective link on the Folsom Street bunker.

Mr. STANLEY MOORE.—Powers says it was the Mission Street bunker and he said that Murray and Freund were present.

Mr. SULLIVAN.—Mr. Freund has testified to the occasion and he says the defective link was observed by him on the Folsom Street bunker.

Mr. STANLEY MOORE.—Well, there is a contradiction, Mr. Sullivan. Delaney said there was trouble with the scales; he is referring to the "Dumbarden"-"Germanicus" incident when the scales were out of order. Mr. Powers says that the bent link happened on the Mission Street bunker and the weighers present were Mr. Murray and Mr. Freund.

Mr. SULLIVAN.—I know what Mr. Powers says.

The only occasion I can remember of when I was called upon to make repairs by reason of an angle-iron being twisted and interfering [1188—1129] with the link connecting the cars of the trains was at Mission Street and is the incident to which I have testified. I never remember adjusting a defective link or drawhead at Folsom Street bunkers.

Q. Do you remember on any occasion going to the Folsom Street bunker when Mr. Smith was present and Mr. Mills was present, and also Mr. Wooster, when some trouble was caused by a link which connected with second and third car of a coal train of cars? A. At Folsom Street?

Q. Yes. A. No.

Mr. McCUTCHEN.—You are surely mistaken about that.

Mr. SULLIVAN.—No, I am not. I refer you to Vol. 22, transcript page 2531 of Mr. Freund's testimony. He testified it was at the Folsom Street dock.

Mr. MOORE.—He was mistaken.

Mr. SULLIVAN.—I don't think he was mistaken, and he refers to the fact that at that time he rang up Mills, telling him that there was something the matter with the cars, and Mills came up afterwards.

Mr. MOORE.—We will show that that was at Mission Street and not Folsom Street.

So far as I remember, all the cars on the Mission Street bunkers were of the same pattern. There were two kinds of cars, however, on the Folsom Street bunkers. The coupling parts of the cars do not come on a level. There are straight links, however,

on pretty nearly all the cars on the Folsom Street bunker. The effect of having an offset in a link is not to cause one car to weigh against another, but to make the connection run clear. You [1189—1130] can move it with your hand. That is the only reason. I cannot say how many offset links I have made for the Western Fuel Company. I guess I have made The majority, however, are straight half a dozen. links. Both ends of an offset link run parallel to one another, but one end is higher than the other. There is a bend in the center of the link. The difference in height between one end of the link and the other end of the link is probably an inch or inch and a half.

Redirect Examination by Mr. MOORE.

Some of the cars, especially the cars on the Mission Street bunkers, are of different size and different type of drawhead.

Recross-examination by Mr. SULLIVAN.

I remember that on the occasion when I was called to Mission Street to look after the bent angle-iron when Mr. Murray, the custom weigher was there, but I can't be sure whether Mr. Woooster or Mr. James B. Smith or Mr. Mills were present. I was a little excited when I went up there. I could not be positive as to them.

A. I could not say whether Mr. Wooster was there at that time. I saw Jim Smith up there frequently but not at that time exactly. I won't say I saw him there on that occasion. I believe I did see Mr. Mills there but I won't be positive. I was excited there.

Q. You were excited? A. You bet I was.

- Q. What made you excited?
- A. Well, I will tell you, if anything goes wrong, I want to get in and I want to see what the trouble is in the stopping, holding the ship up.
 - Q. Was Billy Miller there on that occasion?
- A. Oh, no, I never saw Billy Miller up there; I was pretty excited.
 - Q. Do you always get excited when that happens?
 - A. I get a move on. [1190—1131]
- Q. You testified sometimes 4 or 5 times a day there is trouble on the bunkers?
- A. Four or five times—not 4 or 5 times; 2 or 3 times a day.
 - Q. Two or three times a day?
 - A. Sometimes, not always.
 - Q. You get excited every time, do you?
- A. I mean, to get the ship done in a hurry, and get it out, that is what they pay me, to keep me moving.
- Q. That has been your experience for the last eight years?
- A. Probably 12; I think I have been there 12 years.
- Q. You get excited every time you go there to fix these cars? A. I get a move on.
 - Q. You have to get excited to get a move on?
- A. Not necessarily, but I get a little more steam on, that is all.

Redirect Examination by Mr. MOORE.

On the occasion when I was called up there to Mission Street on account of that bent angle-iron the

ship was knocked off, they couldn't discharge anything more until they got things right.

[Testimony of Frank Wilson, for Defendants (Recalled—Further Cross Examination).]

FRANK WILSON, a witness for the defendants, being recalled, testified as follows:

Further Cross-examination by Mr. SULLIVAN.

I believe that Mr. Edward Powers once discharged me while I was under him in the employ of the Western Fuel Company. It was not because I was not turning out a sufficient quantity of coal; nor was it because I wasn't capable of handling the men under me. It was because it was raining too hard and the men wouldn't work and he said he would have another gang in the morning and another boss. The men would not work because it was raining too hard. I think I was thus discharged in 1908 or 1909. It [1191—1132] winter-time. Edward was in the Powers also discharged me, I think, a second time. It was just after the car strike, I think in the summer-time of 1907. During the car strike the men came to work at eight o'clock; after the strike they were supposed to come to work at seven o'clock and they didn't want to, and they were all discharged. think, however, we all went back to work the next day. I remember speaking for a few minutes to Edward Powers in March or April last in front of his father's house in this city. I do not remember his saying to me, "I wonder if they are going to bring me into it," referring to the Western Fuel Company and Mr. Howard and the co-defendants in

(Testimony of Frank Wilson.)

this case. I don't think the Western Fuel case was mentioned between us. I simply asked him what he was doing and he said he was going to help paint his father's house. We did not talk about the criminal side of the case or about the case at all. I do not believe Edward Powers said to me, "I don't want anything to do with it. I don't care whether they hang or give them a medal." The Western Fuel case was not brought up. I am pretty sure he did not say that to me. I don't remember it, nor did Edward Powers say to me, "You know what was done down there," referring to the manner in which coal was weighed.

- Q. Did you in that conversation say to him, "What can I do? Anyway, what can I do? The beach owes me a living," referring to the waterfront owing you a living?
 - A. No, he never said anything like that.
- Q. Did you say to him in words or in substance during that conversation, "What can I do? The beach owes me a living."
 - A. No, I never said anything of the kind.
 - Q. You never said anything of the kind?
 - A. No.
- Q. In that conversation, when talking about this case, did Mr. [1192—1133] Edwin Powers say to you, "If you are called as a witness, all you can do is tell the truth"?
 - A. No, I never said anything of the kind.
 - Q. Did he say that to you? A. No
 - Q. Did he say that in substance or in effect to you?

(Testimony of Frank Wilson.)

A. No.

[Testimony of Wesley Ewing, for Defendants.]

WESLEY EWING, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I reside in Ingleside district. I have been in the employ of the Western Fuel Company as blacksmith's helper and general extra bunker man since 1906. I am under Mr. W. R. Olinder. As blacksmith's helper I have assisted in making the links that are used in coupling cars, and have sometimes made them myself. Said links are made as a rule of Norway iron because that iron will stand more wear and tear. I so make the links as to give plenty of freedom and easy fit and motion. On the Folsom Street bunkers all of the drawheads are of practically the same height. At Mission Street, of the four cars two were of the same height and the other two were lower. I should judge that Mr. Olinder and I made two or three links three or four times a year. I have never made any link or assisted in the making of any link that was designed or intended to give the Western Fuel Company the best of it in the weighing of coal. We always endeavor to make the links so that they will work free and easy and without binding and so that they will not interfere with the handling of the train.

In my capacity as an extra bunker-man, I do anything from running a locomotive to dumping cars, shoveling coal, trimming and running the offshore conveyors. It has been very common for me

[1193—1134] to run cars on top of the bunkers from the inshore coal offshore, but in the last few years I have seldom run the cars in connection with the discharge of ships. Prior to the last few years, however, I used to run cars in connection with the discharge of almost every ship at Mission Street, and, indeed, until the last few years I did considerable of that at Folsom Street as well.

I remember that there are a couple of large beams upon which the scales-house rests at the Folsom Street bunkers. (The attention of the witness was here directed to a photograph.) I see in this photograph what I term a sill for the scales-house which consists of two large beams. The further beam runs clear across the track on which the cars approach the scales. It runs overhead and is over the scale platform itself; in fact, is right over the scales. Any coal that would be brushed off of a car, as the result of a car being overloaded, would fall upon the scale platform. The portion of the bunkers that reaches out toward the center of the Bay from the scales is planked solid clear down to where No. 1 tower sets, and if a car were overloaded the coal dropping down from the car would be bound to fall either on said planking or on the scales themselves. It would be impossible for such coal to fall into the bunkers below. The orders given to me and to other men in my presence and hearing were never to overload the cars. We were told to load them moderately and to keep the traffic moving, for if one train is stopped and the other blocked, then neither of them can move and the

discharge of the ship is interrupted. When a ship is unloaded with four hatches going, four hoppers or towers are also busy. Two trains of four cars each are needed to take care of those hoppers. Those trains are both standing on the one track on the offshore or south side of the bunker toward the Pacific Mail Dock." [1194—1135]

The chutes leading from the hoppers are sometimes blocked by large lumps of coal. When coal falls over the side of the car it is shoveled back, either into the same train or into the next train that comes along. The trains run by a shoe connecting with a third rail, and, if coal is allowed to accumulate upon the tracks, the shoe is liable to be interfered with and the train derailed. That happens quite often. A single lump of coal weighing 20 or 25 pounds frequently interferes with the running of the car. The ships that come in to discharge imported coal have various numbers of hatches, or, at any rate, do not always have the same number of hatches working. One hopper must be stationed opposite each hatch. When the hoppers are thus moved from place to place to correspond to the hatches we pick up the movable platforms and put them in the new positions of the hoppers. That has always been the custom on the bunkers during my employment there. When ships commence to discharge imported coal, the custom-house weigher is always there to see that everything is in place before the discharge begins. To do that he either goes under the towers or along the inshore track. When I refer to a custom-house

weigher or inspector I mean the general weigher and the man over him. Coal falling over the sides of cars is piled up and shoveled back into them. There are always one or two men stationed on the bunkers for that very purpose and anybody else there who is not busy assists. That job is usually handed to a new man. He is told to go up and clean out under the hoppers. I have always heard the man or men assigned to that job instructed to clean up the coal and throw it into the cars. I have never heard any orders given to shovel such coal down into the bunkers, or any orders to that effect. Anybody would know it was not right to throw that coal into the bunkers. I have personally, myself, helped to throw the coal back into the [1195-1136] cars, and I have seen Eddie Mayer do that also. If the chute from the hopper gets blocked by lumps of coal, the cars get an overload. If they are so overloaded that the coal spills over, the track is blocked and the operations are, of course, delayed. I have seen Mr. Mayer hold up cars that came to the scale-house so overloaded that the coal would be likely to come in contact with the beam. He would hold the car back until the man leveled the car off so that the coal would not touch the beam. Mr. Mayer always said to be more careful and not overload the cars. I have never heard any instructions given to anybody, and I have never received instructions myself, to dump a car of coal into the bunkers if the chance were presented. If you dumped a loaded train down into the bunker, you could hear it all over the bunker and

most anywhere around in the vicinity. If a car were so dumped, the orderly movement of the train to the scales would be interfered with. The trains are run in the routine of a merry-go-round, one following the other. The weigher thus becomes accustomed to seeing the trains and each man on his train, and, if a certain train dropped out, it would be missed. I have many times, when a wreck, for instance, occurred, seen Eddie Mayer and the custom-house weigher come out to see what was the matter.

Cross-examination by Mr. SULLIVAN.

The blacksmith-shop where I am employed as helper is in the rear of the Folsom Street bunkeryard, about 25 feet from the yard bunkers and a very short block from the Folsom Street bunker. I go to work at 7 o'clock, but I am on the bunker generally at six. I am in the shop about 10 per cent of the time. The rest of the day I am on top of the bunker where I oil the gear, do the repairing and assist generally. I am all over the bunker, wherever my [1196—1137] duty requires. In answer to the question when I last operated a train upon the Folsom Street bunker, I would say I ran screenings a couple of weeks ago. I got the screenings from the inshore bunkers. It is not a fact that the screenings are let out of the screening-bin into cars on the wharf below. The screenings that are in the bin come up from below with a conveyor belt. The cars are loaded with screenings by an automotic electric starter. As the cars are loaded they are dumped into barges below. The cars are taken around the

offshore track and their contents dumped into the offshore pockets. We don't generally weigh the cars containing these screenings, but simply keep a tally on them by chalk marks on the cars. I don't believe I weighed those screenings that I hauled a couple of weeks ago. Whether I made a memorandum of the weight of the screenings, I could not say. I took loads and loads of screenings without ever weighing them. I generally put a good heavy load of screenings into a car. I could not say positively as to what the weight of such a carload of screenings would be. I don't make a memorandum showing their weight. I simply keep track of the number of loads. This number I give to the weigher, Mr. Mayer or whoever happens to be tallying. I was on the bunkers vester-In answer to the question how many cars I have operated within the last two years, I would say I haul all the screenings for pretty nearly every ship. I carry such screenings to the offshore pockets. That is where they are generally carried unless there is a special order to dump them into the in-pocket.

In answer to the question how often I made any coupling links during the last year, I would say I made one myself about a month ago and helped to make three or four. Those were straight links. I always make straight links. I know what a setoff is. I cannot [1197—1138] remember that I ever made a link with a setoff. I do not remember that I have ever seen one made. I am familiar with all links that are used and have been used by the Western Fuel Company for years. The effect of a link

with a setoff in it would not be to create a false weight upon the scales. The effect would simply be to make it ride easy with a low car. The length of the cars inside is about six feet five inches. I don't know their width. I should say that the edge of the car extends 14 to 16 inches beyond the rail on each side. If the sides of the cars were open, however, the coal would most assuredly fall upon the track in a heap or pile. The openings under the cars are always fully closed. Coal falling from the top of the car over the side would naturally block the track, even though the edge of the car is from 14 to 15 inches from the rail.

When the Government weigher is performing his duties he is generally looking away from the towers or hoppers. The doors of the scale-house are not always closed. The weigher when taking weights is looking at his scale-beam. I know that he is looking away from the towers, but I don't know what direction that is. His back is to the field of operations where the men are unloading the ship and cars. There is very little noise resulting from the depositing of coal into the hoppers or cars during the discharge of a ship. There is a counter-plate that breaks the drop of the coal from the tubs into the hoppers. Practically all the noise that is made is in connection with putting the coal into the cars. is the worst noise on the job. The door of the scalehouse is not always kept closed when the weigher is taking the weights, nor is it generally kept closed. Whether the windows of the scales-house that face

the towers can be opened, I don't know. The movable platforms have always been on the floor or deck of the bunkers since I have been [1198—1139] on the job. (Here explained by counsel for the defendants that this witness has only been on the bunkers since 1906.) The planks are easily moved; two men can pick them up. I have never seen these movable platforms arranged along the side of the bunker. have never seen the space open under the towers or hoppers, or between the towers or between the first tower and the scales-house. The platforms are always there. The space down at the end of the offshore pockets is not covered. (The witness was here examined regarding the location of the planking and movement of the cars over the bunkers by reference to certain photographs, including United States Exhibit 159 duly introduced in evidence at point, but the testimony is unintelligible by reading of the record because such general terms as "here," "there," "at this point where I am indicating with a pencil," etc., etc., were used in the questions and answers.

I received the instructions not to overload the cars every time I had anything to do with the train and the hauling of coal. Eddie Mayer as a rule gave me those instructions. They are given partly for the purpose of preventing the coal from falling into the bunkers below and partly to keep the trains moving. Every time, therefore, during the last eight years that I was called upon to move those cars, Mr. Mayer gave me those specific instructions. In answer to the

question whether he gave me those instructions for the last 365 days in the year, I would say I am not there on that work every day. I am only there as an extra man; and, in answer to the question why, when Mr. Mayer last gave me those instructions. I didn't reply, "What do you tell me that for every time; I know my business." I would say I am not that kind of a man. He last gave me those instructions when I was last hauling coal. I think it was a couple of years ago I last worked as a dumper. He did not then give me instructions not to dump any [1199—1140] coal into the bunkers below. I knew by experience that that should not be done. He did, however, when I began to act as a dumper, two years ago, instruct me not to overload the cars. The extra man who was employed for that purpose generally loads the coal back into the cars when it spills over. He is continually shoveling and cleaning it up. He puts it in little piles of 100 pounds or 200 pounds, and, as a car comes along, every four or five minutes, he puts it into the car. He is continually engaged in cleaning up and scraping up the coal that falls from the cars. He thus manages to keep the platform pretty free. I have never seen the coal distributed around as appears in this photograph which you now show me. I have never seen such a condition as is depicted in Defendants' Exhibits "H," "D," or "G," nor have I ever seen conditions as bad as depicted in Defendants' Exhibit "J."

Q. Don't you know that the defendants had these photographs taken to show as good a picture as pos-

sible, to help their cause?

Mr. STANLEY MOORE.—That is objected to as an improper question. As a matter of fact, these photographs, Mr. Sullivan, were taken long after the custom-house duty on coal was removed, and had been received for months.

Mr. SULLIVAN.—I will withdraw the question. [1200—1141]

I have never spoken to Mr. J. B. Smith about the facts to which I am testifying in this case, nor to Mr. Mills, nor to Mr. Mayer, nor to anybody else, except Mr. Stanley Moore in whose office I have been a couple of times. I have seen Eddie Mayer almost every day since 1906, but I very seldom speak to him, and I have never spoken to him about this case.

Redirect Examination by Mr. MOORE.

(The witness was here examined on the photographs concerning which he testified on recross-examination and on certain other photographs.)

The hopper doors are opened by compressed air which is run by electricity, which in turn is generated in the power plant of the Western Fuel Company. The electricity is turned off promptly and accurately at the noon hour. After that there is no electricity on the bunkers until a couple of minutes before one o'clock. To open the hoppers during the noon hour when the electricity was thus off, a man would have to lift a 600-pound cast-iron weight. The electricity is turned off in the afternoon at five o'clock unless they are going to work overtime.

Every time I ran one of the trains Eddie Mayer

gave me instructions not to overload those cars. Those instructions are always given to a new man, but are repeated also to the old men.

Mr. STANLEY MOORE.—Q. In answer to Mr. Sullivan, you said that the instructions were given to you every day when you went to work, like sepa-ate instructions, and at another place you said, "Eddie Mayer told me that several times."

A. Every time I worked on the trains. I am there daily, but I am not always [1201—1142] on the trains.

Q. Oh, every time you worked on the trains.

A. Yes, sir.

Eddie Mayer would give the instructions in a loud tone of voice so you could hear him all over the bunkers in that vicinity. At the time when he called out his orders there would be four tubs of coal coming up, the trains running and probably the screening car running too, and a general commotion going on.

I have known the scales on the bunkers to break down by reason of the overloading of the cars. I have several times seen Mr. Mayer stop a car because it was overloaded and tell the men to smooth the load down on top so it wouldn't strike the beam. Every time I have been on the trains Mr. Mayer has been hollering about the overloading of those cars. There are men coming and going on the bunkers all the time. The Government weigher has nothing to do with the screenings. The screenings are brought into the screening-bin by the conveyor belt. The

screening belt drains off the fine coal and carries it to the screenings-bin so that it will not get into the bunkers where the dealers are supplied, because the dealers get the clean or lump coal. All of the coal, lump and screenings alike, paid the duty at the time the tarriff laws were in force before said coal ever got into the bunkers at all. After that the Government has nothing to do with said coal. It is not in bond. The screenings belt taps those bunkers and takes up the screenings by the conveyor on top of the bunker again and at that time the Government weigher has nothing at all to do with the screenings, and there is, therefore, no Government weigher present when we are moving the screenings about.

(Here the witness was shown certain pictures or photographs [1202—1143] representing the discharge of imported coal from a vessel by means of tubs or buckets coming up from the hold.)

The tripper upon the bow is made out of a couple of weights bolted in. There is one tripper on each side of the boom. The weights are round cylinders weighing 80 pounds a piece and the tub comes over and hits the tripper and dumps over.

Juror BOLANDER.—Q. Does that tripper upset that bucket, or does that bucket upset itself when that catch is released, owing to the fact that it is overweighted on one side?

A. This unlatches the tripper, here, and the tub, being full, and if you will notice how the tubs are built, the mouth extends away out, the mouth being full of coal, they dump; otherwise they will not dump.

Q. Is that bail out of center?

A. No, it is in the center, the center of the balance. When it is on the hook, it is supposed to throw over. It takes a load of coal in the mouth to throw it over.

Q. That is, its natural throw, in and of itself?

A. Its natural tendency in the mouth of the tub.

Mr. STANLEY MOORE.—This picture represents the bucket right in the act of dumping.

A JUROR.—Q. If the bucket is half full, will it dump?

A. No, sir, it will not dump if it is half full.

Mr. ROCHE.—Q. Let me ask you a question. The mouth of the bucket, as you have already testified, projects forward, does it not?

A. Yes, sir.

Q. The rear of the bucket is perfectly perpendicular, is it not? [1203—1144]

A. Well, as near as a round-shaped bucket could be. She is round here. She comes out with a belly down here where this wheel is, and it runs up on about a quarter pitch.

Q. That is, a projection inward rather than outward from the rear? A. Yes, inward.

Q. There is always more coal, is there not, in the forward half of the tub than there is in the rear half?

A. No, sir, not unless it is clear full. When it is partly full, most of the coal is in the belly.

Q. I am talking about a tub that is full.

A. Oh, yes.

- Q. That is correct, is it not? A. Yes, sir.
- Q. In other words, if a partition were placed inside the tub, on what would be called the median line, or center of the tub from bottom to top, and each compartment would be completely filled with coal, there would be more coal in the forward compartment than there would be in the rear.
 - A. Yes, sir.
 - Q. There is no question about that, at all, is there?
 - A. No, sir, no question, at all.

Mr. STANLEY MOORE.—Q. And the center of gravity would be higher, or lower in that tub, of course, according to the extent to which it was full?

A. Yes, sir.

A JUROR.—Q. What puts that bucket back in its original position?

- A. It is heavy behind, it naturally comes back when it is empty.
 - Q. It naturally throws back.
 - A. Yes, it is heavy behind.

To Mr. ROCHE.—I could not say what is the weight of the coal that is originally contained in one of these tubs when she is evenly filled. I do not know much about the weighing. As to the [1204—1145] approximate weight of one of those tubs when evenly filled, I should say it was anywhere from 1600 to a ton, say from 1600 to 2100. That is my idea. If a partition were inserted in one of those tubs practically in the center running along the median line from the bottom of the tub to the top of the tub, I

could not state even approximately how much more coal would be in one side than the other, nor could I saw proprotionately. I do not think the forward compartment would contain two-thirds of the coal in the tub, and the rear compartment one-third; I do not think that would be a fair proportion approximately. Two-fifths and three-fifths would probably be nearer but I cannot say for sure.

(The photographs on which this witness has been examined were here introduced in evidence as Defendants' Exhibits "M" to "V," inclusive.)

Recross-examination by Mr. SULLIVAN.

I do not know when the Government weighers stopped taking weights at the Folsom Street bunkers. Since then much coal has been brought to this port from Australia and dumped into the Folsom Street bunkers. I do not know whether that coal was consigned to persons other than the Western Fuel Company. I have noticed several strange men in the scales-house taking weights with Mr. Mayer since last October, and more or less up to the present time, but I do not know who they were or whom they represented.

Further Redirect Examination by Mr. MOORE.

During the discharge of a vessel, as I have said, the temporary planking is put under the towers or hoppers so as to cover the inshore bunkers. When the hoppers are very far apart, however, as in the case of a very long vessel with her hatches far apart, there are spaces between the hoppers which are not

boarded over. Otherwise the space is entirely covered.

[Testimony of Fred Tietjen, for Defendants.]

FRED TIETJEN, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. KNIGHT.

I am a scales adjuster and for about 14 years have been connected in that capacity with Fairbanks-Morse. I have adjusted scales [1205—1146] of the Western Fuel Company on the old Chandler bunkers at Folsom Street. I have also adjusted scales at the Rosenfeld bunkers. In 1905 I visited the Folsom Street bunkers on the occasion of the unloading of the steamer "Germanicus" and the steamer "Dumbarden." They had a little trouble with the scales and I found it and adjusted them. The manager of the Fairbanks-Morse Company sent me down there and I found that the scale had sunk down on what they call the "catch-blocks" to hold the scale from falling through the wharf. The bolts were pulled through the corner and set down on blocks. scale at Folsom Street was of the Fairbanks-Morse type. I am familiar with that type. The blue-print shown me marked "Thrust Lever Scale" is the same type of scale that was in use at that time on Folsom Street No. 2 bunker of the Western Fuel Company. The structure with the beams across the mark "elevation' is the outside frame of the scale. These corners are what the scales hang on. This is outside the wooden frame of the scale. The four stakes

represent the platform and there are the bolts which show up on the corner section that the scales hang on. The bolts are on the four corners and are more particularly represented in the upper cut. That cut represents the holding of the scales; that is really all there is to it. The trust-levers of the scales are shown here. The scale is shown underneath the frame and marked "cross-section." The beams in that part of the plan marked "elevation" are some 12 by 14, and others 10 by 12. There is a planking across the beams covering them entirely.

Mr. ROCHE.—May I ask a question here? Q. On what does this platform rest? (Referring to the platform of the scales.)

A. This platform rests on the bearings here. This is the bearing, [1206—1147] and this stake here and this stake here.

Q. How many of those stakes are there?

A. Four. Two main stakes and two center stakes to help support the platform and take some of the strain off the largest stakes.

Q. What is the size of those stakes you have just referred to? A. 12 by 14 timbers.

Q. They suport that platform, do they?

A. They support the platform with a 6 by 14.

Q. And what do those stakes rest on?

A. They rest on a 4 by 12.

Q. A 4 by 12 post.

A. No, on a bearing-plate. $[1207-1147\frac{1}{2}]$

Q. On what does your bearing-plate rest?

- A. It rests on what they call a shoe. We call it a bearing-foot.
- Q. What is that bearing-foot? Will you describe it a little more particularly?
- A. It is screwed on to the bearing-plate and it rests on what we call the knife-edge of the scales, the working part of the scales; it is a flat, and it is a grooved steel, a hardened steel.
- Mr. KNIGHT.—Q. Can you show a little more particularly what that bearing-plate is? Will you illustrate or show on that blue-print, just where that bearing-plate is situated?
- A. That bearing-plate is situated on each corner. One is situated here and the other there, on the four corners, and it is screwed on to a 4 by 12 planking. That bearing-foot sets on what they call a knife-edge, that is the whole workings of the scale.
- Q. In the course of weighing what happens to that knife-edge which you have referred to?
- A. In weighing, that is the whole workings of the scale, it puts the pressure between what they call the fulcrum of the scale and the hanging part of the knife-edge.

The knife-edge gets dull from constant use and has to be renewed. We sharpen it up in such cases. If the knife-edge is dull, it *take* just so much more for the scale to break and thus the accuracy of the weighing is affected. As to the frequency with which we find it necessary to sharpen up that knife-edge, I would say it depends altogether on how much the scales are being used and how often we are sent for.

It is done probably every year and a half or two years or three years. The Western [1208-1148] Fuel Company would order it done. We would condemn the scale and they would have the knife-edge taken out. We made an examination of the scale, whenever the Government condemned it. The Government would go down with a ton of weight to test the scale, and, if they put the weight on the corners and found it was not right, they would condemn the scale and stop the Western Fuel Company from using it further, and the company would notify us to come and adjust the scale. I have gone up there a good many times for that purpose. The condition is one that would naturally arise from the use of the scales in the manner I have known them to be used. That would occur in any pair of platform scales. The platform of the scales is supported by posts on each corner which come right up under the bearing within an inch thereof. The posts are about 6 by 10. any of the posts gave away the car going down would break the lever of the scale and fall through the wharf and probably drop to the bottom of the bunkers.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred:

Q. What did you find was the trouble with those scales at the time you examined them on this occasion in September, I believe it was, in 1905, with reference principally to the unloading of the "Germanicus"?

A. At that time when I went down I found that

the scale had settled down on these blocks, that is, very near, within a quarter of an inch of touching the blocks, and you really could not tell with an empty load but when you would put a heavy load on it would bear right on the block and would bind the beam.

- Q. What was the reason, so far as you observed it, for that [1209—1149] scale settling in that manner?
- A. The only reason I could give was either the bunkers or the bolts pulling down through the old timber.
- Q. Will you point on this blue-print to the bolts that had become loosened, thus causing the scale to settle? A. Right here (indicating).
 - Q. The bolts on the corner of this platform.
 - A. Yes, sir, on the four corners of this platform.
- Q. Did you notice how many or to what extent the bolts had pulled or given away?
- A. No. They often pull down, expecially if the timber is old, half an inch, 3/4 of an inch or may be 1/4 of an inch, or anything; it varies at different times.
 - Q. What was the size of those bolts; do you recall?
 - A. They were about 7/8 inch bolts.
- Q. Can you illustrate a little more particularly just how those bolts were attached to the timbers?
- A. They were put down through the top of the timber, and they have a nut on what they call the corner-iron to hold the corner-iron up. They were round-headed bolts, probably an inch and a half or

(Testimony of Fred Tietjen.) an inch and 3/4 in diameter.

- Q. Taking this corner of the desk here for the purpose of illustration, it ran from one corner to the other, did it?
- A. It ran from the top side right underneath to the bottom of the frame.
 - Q. How long a bolt was that? A. 13-inch bolt.
 - Q. Through what thickness of timber did it run?
 - A. Through 12 inches of timber.
 - Q. How was it attached at each end?
- A. The top end had a round-head and the bottom had a large nut.
- Q. A nut was screwed in at the bottom and a head permanently attached to the bolt on the top.
 - A. Yes, sir. [1210—1150]
 - Q. What had given way there?
- A. That nut had simply pulled down into the wood, the wood was soft, probably beginning to decay, or something, and it pulled it down in the wood.
 - Q. The nut had pulled down?
 - A. The whole bolt had pulled down.
 - Q. By reason of the nut giving way?
 - A. By reason of the whole pressure on top.
 - Q. What would be the immediate effect of that?
 - A. That would cause the whole scale to lower.
 - Q. And that brought it down on the catch-block?
 - A. Yes, sir.
- Q. Do you know what kind of timber that bolt was imbedded in? A. Yes, sir, Oregon Pine.
 - Q. Could the condition of that wood be due to the

(Testimony of Fred Tietjen.)
constant using of the scale, or was it due to any other
cause?

A. It was due to the constant using of the scale and the cars running over it; it was bound to pull it down with the continual hammering on it, and with the timber softening, it would pull into the timber.

Q. Was there any indication that that bolt or that scale had been tampered with?

A. Not that I could see or know.

Q. And it was one of those things which you would naturally expect, would you, in the course of the business?

Mr. ROCHE.—That question is objected to, may it please the Court, upon the ground that it calls for the conclusion of the witness. The witness may state what he observed so as to enable the jury to determine that very thing.

The COURT.—The objection is sustained.

Mr. BLACK.—We note an exception.

Mr. KNIGHT.—Q. You said that that was due, in your opinion, [1211—1151] to the constant wear and the load that was placed upon the scale.

A. Yes, sir.

Q. Will you state whether or not, in your opinion, any other cause contributed to the condition of that bolt than what you have already stated?

Mr. ROCHE.—That is objected to upon the same grounds.

The COURT.—The objection is overruled.

A. Well, I don't know of any other cause. It was simply what I call a natural cause; it is an every day

cause; that is the way we term it, an every day cause, that is all.

(Witness continuing.) The upper portion of that blue-print shows the beam, only instead of being on a frame here it is on what we call a "goose-neck." This part is not on the scale here. That represents the same beam down on the bunker. The bolt is marked No. 2. The corner-iron is to hold the scale up. The knife-edge is in a small place like that. They call it the knife-edge of the scale. The bolts which become loose are 7/8ths by 13 inches long. There are no washers on them; they are round themselves and that does away with the plates. They are specially made round-head bolts. Where the nut is, is where it holds the corner-iron up. It is the ordinary type of bolt used on all Fairbanks-Morse scales. The scale is virtually suspended on eight bolts, two in each corner. (Then the blue-print was offered in evidence, there being no objection, and was marked Defendants' Exhibit "W.")

When I discovered that that bolt was loose I tightened it up and sawed the catch-block off a little so as to give a little more play to the scale. I found the scale about a 1/4th or 1/8th of an inch from the block. [1212—1152]

Q. How much distance did you give instead of the 1/4? A. About an inch.

(Witness continuing.) That would be about the normal distance. The scale was in good working order after the change was made. There was no other imperfection about the scale at that time that I could

discover. After the repair, I tested the scale myself and found it to be in good order.

The effect of taking a weight in view of the vibration that exists on the wharf would depend upon whether the scales were sharp or dull. If sharp, the notches are 5 and 10 pounds. It ought to break at 10 pounds. It would make a difference of as much as ten pounds in the breaking of the scales. If the plate gets dull, the difference might go as high as 20 [1213—1152 $\frac{1}{2}$] pounds; that is, it would take that amount to make the beam break, but the top of the scale. The wind has a great deal of effect on the scales and might make a difference in the accuracy of weighing of from 10 to 50 pounds. vibration would have an effect on the life or wearing qualities of the scales in that it would help to dull the knife much quicker than if there was no vibration. It would also help to pull the bolts down by the continual jarring.

I took some weights down there in the scales-house at Folsom Street wharf about three weeks ago. I weighed a few of the ordinary carloads of coal.

Q. Will you state what weights you took?

A. Well, I weighed a carload of coal on what they call the up-beam. I have the weight.

Q. Did you take a memorandum of it?

A. I took a little memorandum of it, yes. I weighed a carload of coal which was 23,560, with what they call an even beam. I weighed the same carload of coal on what they call an up-beam, which was

23,510; that is 50 lbs. difference. I weighed another carload of 21,200 with the up-beam and the same car I weighed on an even beam at 21,275, which was 75 lbs. difference.

- Q. Were those two cars loaded with coal?
- A. Two carloads of coal, yes, sir.
- Q. What up-beam did you give the last weighing to which you have referred, where it went 21,200 and 21,275? A. That was a strong up-beam.

Mr. KNIGHT.—Q. What do you mean by the use of the [1214—1153] term a strong up-beam?

A. A strong up-beam is a beam that will go up and stay up at the top, it will probably bounce back 1/8 of an inch, and then go up and stay there.

Q. Will you describe a little bit more particularly just how you took that up-beam?

A. I took the up-beam by first taking the weight with the beam in the center and then hitting it with my finger that way and sliding it say an inch and she will go up and stay up hard and bounce back a little and then you call that the weight.

Q. Have you ever seen custom-house weighers weigh coal at that scale-house similarly to the manner in which you weighed these two cars of coal three weeks ago?

A. Well, I have seen custom-house weighers weighing, but not with quite as strong an up-beam as I did it.

Q. You have not seen them weighing with quite as

(Testimony of Fred Tietjen.) strong an up-beam, you say? A. No.

You really could not make a statement, to tell any particular weighing because one time it may be 20 lbs., and another time it may be 150. It is according to how hard he hits it. And how hard the beam comes up and stays up. It may be 150 lbs. or it may be 20 lbs. There is really no way of determining it.

The Western Fuel Company used to keep their scales in good condition. We have not done much work for the last five or six years probably, but before that they always kept them in good condition. I have not had occasion to examine those scales myself during the last four or five years. Nobody that I know of from Fairbanks-Morse has done so either. The last time I saw them they were in good condition. We had just taken them out and [1215—1154] sharpened them up. It was sometime in 1905.

Q. Can you describe the operation which you have seen, or the manner of operating those scales which you have seen custom-house men do during the course of weighing cargoes of coal which you have yourself actually seen?

A. In ordinary conditions when we used to go down there the coal would seem to be such a commodity that they didn't pay much attention to the weight; they would just throw the beam back this way or that way and call it the weight. One time it may be more than others. It really was what you call a snap weight.

Mr. KNIGHT .- Q. They did it pretty quickly?

A. A catch weight; there was no way to judge the difference in it.

Cross-examination by Mr. SULLIVAN.

I should say it was 10 or 11 years ago when the Dunsmuirs had the Folsom Street bunkers that I first examined the scales there. The next time I examined them was in 1905 under the Western Fuel Company. That was the time when a certain complaint was made about the platform scales resting on the uprights. It was only three weeks before that that we had made the last preceding examination of the scales. At that time we repaired the scale and put the knife back in good condition. In other words. three weeks before the incident of 1905, I put the scales in perfect condition; the bolts were tightened, the knife-edge sharpened and the scales were in as good condition three weeks before this discovery of the resting of the platform on the uprights as they had ever been. I noticed the difference in weight at the time of the existence of that defect, caused by the platform resting on the upright. I went down there and we ran a car of coal on the scales and as soon as we did it, the beam on the scales stuck; it would not move; so then I got down underneath and examined it. I remember that you could move the pointer about a ton or three tons and then it [1216— 1155] would not register at all. The beam would just stick in the center and refuse to move. I have no idea how long that upright had been interfering with the operation of the scales. I don't see myself

why they could not see it when they were weighing. Mr. Wooster sent for me first. I was not surprised to find that the scales were out of order after I had repaired them three weeks before, because that happens often. The defect that I noticed was that the bolt had stuck in the timber. Probably the wharf got out of shape a little bit in taking on a cargo of coal. There was a pulling down through the frame of the scale. I remember hearing at the time from Mr. Wooster that the schooner "Dumbarden" had weighed out 409 tons short in a cargo of 4707 tons. I don't remember the month in 1905 when this incident occurred. In answer to the question whether I, at the same time, discovered that the steamer "Germanicus" had been unloaded at Folsom Street with a shortage of 350 tons, in a cargo of 5950 tons. I would say that all I know is that Mr. Wooster told me there was a big shortage; I didn't know what it was. There was complaint regarding the shortage on both steamers, however. I cannot remember how many times I went down to the Western Fuel Company's docks before 1905. The books or memorandum which I kept was destroyed in the fire; that is the reason they cannot be produced at the present time. After the fire I made no repairs at all to the scales myself, personally, nor did the Fairbanks-Morse people make any that I know of. The frequency with which the knife-edge on the scales ought to be sharpened in order that the scales may be kept in good repair depends on the use to which the scales are put. I would say that an ordinary, average knife-edge in an ordinary

scale of this type ought, if the scale is subjected to rough usage where thousands and tens of thousands of tons of coal in a month are weighed, to be repaired or sharpened about every three years. Whether the [1217—1156] Western Fuel Company's scales should have been sharpened three times from 1906 to 1914, a period of eight years, depends on how frequently they use the scales; they should have been if used right along. The scales ought to have been sharpened at least once in that time, anyway. They may have had somebody other than myself or Fairbanks-Morse to sharpen the scales since the fire. I don't know.

When I went down to Folsom Street recently to make the tests that I have described. I never examined the scales; I simply tried the beam. I did not examine the knife-edge. I simply went into the scalehouse and caused to be put upon the scales a certain weight and took the weight at an even beam and at an up-beam, respectively, and found a difference of 50 pounds. When I took the up-beam the beam was hard against the top, and, if I had put another 1000 pounds on those scales it could not have gone any Then I made another test of two carloads in the same situation, the two carloads in one instance weighing 21,200 pounds with an even-beam, and, in another instance, 21,275 pounds with an up-beam. The up-beam was probably a little harder in this case than in the previous case. That is the method pursued by all the weighers in this coal business. not at the time told that I was to take these tests for

the purpose of testifying in court, though it was suggested to me that I might probably be asked to testify. I guess that I took the weights partly for the purpose of qualifying as a witness in this case. I knew what the condition of the scales was at that time, and, when you ask me whether I made an examination of the knife-edge or posts or different parts of the scale, I would say I know that when it takes 15 or 20 pounds to break the beam, the scales are dull. I don't have to examine it. The scales were very dull in this case and might have been in that condition for quite awhile. [1218—1157] If you were making a test for splitting hairs, the scales were not in a very good condition, and, indeed, for a proper and adequate test, I would say that the scales were not in a condition for a fair and accurate test generally for the purpose of presentation to a court and jury.

On that occasion in 1905 to which I have referred, a piece of the upright under the scales was sawed off by myself. I took off probably an inch and threw the piece away. Mr. Wooster may have kept it for a keepsake, I don't know.

- Q. Was not that piece that you had sawed off the top, wasn't it quite smooth and polished as if pressure had been exerted on it for some time before?
- A. Well, it showed, with the coal-dust on it, it showed it had been wearing on it.
- Q. The other uprights that had not been touched by the platform were dirt-covered and were rubbed, were they not? A. Yes, they always are.

- Q. But that particular piece was smooth and was polished?
- A. No, it was not polished, it shows where a little dirt had scraped on there. It showed a rub, that it rubbed there.
 - Q. It showed a rub? A. Yes, sir.
- Q. And it showed a friction that had been continued for some little time? A. Yes, sir.
- Q. What is the effect of the pressure of one's foot against the beam-rod?
- A. The minute you put your foot against the beamrod it will stop the scale from weighing. It is really hard to tell how much pressure, it is according to how hard you put your foot against it.
- Q. A slight pressure might make quite a difference in weight?
 - A. Yes, maybe 100 or 200 lbs. [1219—1158]
- Q. That is, the mere pressure of the sole of the foot against the beam-rod would make a difference of several hundred lbs., would it not?
 - A. Yes, probably 500 lbs.

Redirect Examination by Mr. KNIGHT.

The mere pressure of the sole of the foot against the beam-rod would be indicated upon the beam so that anyone accustomed to using the scale could detect it immediately; the beam would stick right in the center and would not move at the time the pressure was put on it.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred:

Q. Will you state whether or not you were requested to go down and make these weights in such manner as the custom-house men were accustomed to making them?

Mr. ROCHE.—We object to that as immaterial and as not redirect examination.

Mr. KNIGHT.—It is redirect examination on the cross-examination and on the questions put to the witness as to how he went down there to make the weights.

The COURT.—The objection is sustained.

Mr. KNIGHT.—We note an exception.

The COURT.—You might ask him what instructions he received.

Referring to the tests that I made, I would say the effect of the knife-edge being dull would be simply that more weight would be required to break the beam. I would say that the dull scale might require perhaps (it is hard to say exactly) 50 or 70 pounds to break the beam. After you have broken it, it is not true that you [1220—1159] would have the same indication of a rising beam on a dull scale that you would have on a scale where the edge is very sharp.

- Q. When you examined the scales previously to the time that the "Germanicus" and the "Dumbarden" were unloaded, did you also examine these bolts that you refer to?

 A. No, I did not.
- Q. So you don't know what the condition of those bolts was at that time?
 - A. No. You see, in taking out the scale we don't

have to bother the corners, we just knock the pins out of the scale and we leave the bolts and the corneriron in there and the link—we don't disturb that at all.

- Q. What do you mean by the expression tightening the bolts?
- A. Tightening the bolts is screwing the bolts up in the corner-iron; when they come down a little we screw them up and bring the corner-iron up against the lumber or against the timber.
- Q. Did you have occasion to screw up the bolts you afterwards found loose? A. Yes, sir.
- Q. You did not notice, however, at that particular time what the condition of that bolt was?
 - A. No, I did not.
- Q. Did you notice the condition of the timber around it?
- A. Yes, the timbers were in fairly good shape, fairly good, but they were beginning to rot out a little.
- Q. Will you state what effect would be indicated on the beams if the scales were touching one of those posts in the manner you have described, how that would show itself on the beam?
- A. As soon as the bearing-plank would touch that post the beam would stay in the middle, it would not move. Otherwise you could move it out or in. It would just stick in the center, it would not move.

 [1221—1160]
- Q. The defective condition of the scale would become immediately noticeable?

A. Yes, sir, it would.

The Fairbanks-Morse Company have three men engaged like myself, including myself, in adjusting scales. Mr. Shaver used to do a great deal of this work, but he died two years ago in November. Whether he did some work for the Western Fuel Company up to the time of his death, I do not know. I am myself in the country about six months in the year and the Western Fuel scales may have been adjusted by some other employee of Fairbanks-Morse during my absence. I do not know whether or not there is any charge on the books of the Fairbanks-Morse Company for work done for the Western Fuel Company on their scales since the time of the fire. I am in the working department and not in the book-keeping department of the store.

Q. Are you able to say at what point the scales cease to work when they are in a defective condition such as you found in 1905?

A. They showed they wouldn't work at all. When I went down and put on a car of coal in there the scales simply stood on the center, and I knew what was the matter, that there must be something either broke or hanging on the lever of the scale.

Q. You are not able to state then how much of a weight it was necessary to put on those scales in order to bring the scales down to the top of the block?

A. No. You could probably take and test it with a ton and it would go all right, but if you put 5 tons on it would go right down and rest on it.

- Q. There would be a point beyond which it would not register weight? A. Yes, sir.
 - Q. But you don't know what that point is?
 - A. No, I don't know what it is.
- Q. It would register weights up to that point, whatever it is? [1222—1161]

A. Yes; you may take the scale empty, and it would balance just as nice as it could, but when you put a load of five tons on it it would not work at all.

Recross Examination by Mr. SULLIVAN.

At the time when I made the examination in 1905 the scales would weigh up to a certain point; that is, up to 1,000 pounds or 2,000 pounds, but when you got a heavier load, of probably 5,000 pounds, it would stick. The weighing would not depend upon the position of the car on the platform at the time. Mr. Smith was not present at the time when I made my examination of the scales in 1905, nor was Mr. Mills or Mr. Mayer. The weigher for the Western Fuel Company was a gray-haired man. (Here stated by Mr. Moore that the weigher was Mr. Delaney).

The extent to which the weighing is affected by pressure against the scale-rod depends altogether on the amount of pressure. A slight pressure would affect the scales a whole lot; that *it* is, the sensitive part of the scale. A very slight pressure would affect the scales slightly; a very heavy pressure would affect them considerably.

Further Redirect Examination by Mr. KNIGHT. Mr. KNIGHT.—Q. Suppose you should put your

foot up against that rod, if you were sitting there, or suppose you should lean against the scale-rod, what effect would that have on the motion of the beam?

- A. The motion of the beam would stop, it would stick there.
- Q. How slight a pressure could you exert on the scale-rod and not have it noticeable in the operation of the movement of the beam?
- A. The weight of a lead-pencil against the rod will show an effect on the beam, so you can see how slight it is. [1223—1162]
- Q. Would anyone familiar with weighing immediately detect that there was some pressure of that kind?
- A. Why, I should think they ought to.

Further Recross-examination by Mr. SULLIVAN.

When I was down at Folsom Street a few weeks ago I noticed the rod beam extending from the platform of the scales to the scales-house. I didn't observe whether or not it was exposed. (Admitted by counsel for defendants that the scale-rod is not covered "where it is running up to the framework of the wharf," but insisted by said counsel that it is boxed in after it reaches the scale-house itself. The witness was here shown a photograph of the bunker, including particularly the scale-house.) The rods shown in this photograph are both connected with the scales. There are two scales and each rod connects with one of them. There is an exposure of about the height of the car, about 8 or

9 feet. I don't believe the wind would hit this rod very strong because it is behind a lot of timbers and rafters, but, even assuming the wind did hit the rod, I would not imagine it would have an effect of more than five or ten pounds. Anybody standing down there could most assuredly touch the rod and affect the weights, but the man weighing would know it right away. He ought to know it. Sometimes the rods of the scales are thus boxed and sometimes they are not. The box at times gets knocked off. The general way, however, is to box the rod in. I think it should be covered in. It is bad construction to have it exposed. (The photograph referred to above was here introduced in evidence and marked "U. S. Exhibit 160.") [1224—1163]

Further Redirect Examination by Mr. KNIGHT.

Those scales were originally put in, I believe, for the Dunsmuirs. I think they were actually installed by Mr. Shaver and a man named Allis, employees of the Fairbanks-Morse Company. When Fairbanks-Morse Company install a scale they furnish a plant and install it to the best of their ability.

[Testimony of John Gallaway, for the Defendants.]

JOHN GALLAWAY, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I am now and have been continuously since 1893 a police officer of the City and County of San Francisco. For five years I have been stationed at the Pacific Mail Dock on my regular beat and am sta-

tioned there now. I am acquainted with David G. Powers, and have been acquainted with his family for 30 years. I was present four or five months ago upon the occasion of a conversation between David G. Powers and a man by the name of Larry Brennan, a gatekeeper of the Pacific Mail Company.

(At this point counsel for the defendants asked the witness to relate what David G. Powers said upon said occasion, but, upon objection by counsel for the prosecution that sufficient foundation had not been laid for the impeaching question in that no reference had been made to Larry Brennan and no specific reference to the time and place of this alleged conversation in the examination of David G. Powers, the Court permitted said David G. Powers to be recalled for further cross-examination.) [1225]

[Testimony of David G. Powers, for Defendants (Recalled Cross-examination).]

DAVID G. POWERS, a witness recalled for further cross-examination by the defendants, testified as follows:

Further Cross-examination by Mr. STANLEY MOORE.

Mr. STANLEY MOORE.—Q. * * * I will ask you do you recall having had a conversation with Mr. Brennan in the presence of Officer Gallaway, about five months ago, down by the Pacific Mail Dock?

A. I have had several conversations with Mr.

(Testimony of John Galloway.) Galloway and Mr. Brennan.

- Q. Then, directing your attention now to a particular conversation, I desire to ask you if you did not open the conversation by saying to Mr. Brennan, "Have you seen the papers," and that in the course of that conversation you referred to the Western Fuel case, and said that it was a cinch and dead easy, and that you expected to make from \$50,000 to \$60,000 from the Government out of it, and that there was a man back East, in the sugar cases, that had gotten a pile of money, or a very large amount of money? A. I did not.
- Q. Do you state that no part of that conversation took place? A. Yes, sir.
- Q. What part of the matter that I have stated to you as actually stated by you in the course of that conversation? A. None at all.

Mr. STANLEY MOORE.—That is all.

Mr. SULLIVAN.—That is all. Wait a while.

Q. Did you have any conversation at all with Larry Brennan in the presence of Officer Galloway?

A. Yes, sir, I had several conversations. [1226—1165]

[Testimony of John Galloway, for Defendants (Recalled).]

JOHN GALLOWAY, a witness recalled for the defendants, testified as follows:

Direct Examination by Mr. MOORE.

Mr. STANLEY MOORE.—Q. Whereabouts was it that this conversation took place between Mr. Powers and Mr. Brennan in your presence and hear-

ing, Mr. Galloway, where was that?

- A. Right in front of the gateman's little house, right where he stands there, in front of Pier 42.
- Q. And Pier 42 is one of the piers that is occupied by the Pacific Mail Company? A. Yes, sir.
- Q. What is the business or occupation of Mr. Brennan, if you know?
 - A. He is the gateman at Pier 42.
- Q. And you state that that conversation took place about how long ago?
 - A. In the neighborhood of four or five months.

Mr. STANLEY MOORE.—Q. I will ask you whether or not it is not the fact that Mr. Powers stated, in your presence and hearing upon that occasion that he expected to make from \$50,000 to \$60,000 out of the Government in the Western Fuel Case, and that there had been a man back East who had gotten a big pile of money from the Government in the sugar case?

A. He stated that he expected—

Mr. ROCHE.—Now, just a minute.

The COURT.—Answer that "Yes" or "No."

A. Yes, sir, that is about the conversation.

The COURT.—Q. What is desired of you, Mr. Galloway, is what Powers said at that time, concerning his expectation of getting money from the Government in this case, or the Western Fuel case, and what had occurred in the East with regard to the sugar cases.

A. He made a statement to Mr. Brennan, [1227—

1166] stating that he expected to get about \$50,-000 or \$60,000. As soon as he made that statement, you know I kind of looked at him, and kind of smiled; I was standing right alongside of him, and he looked at me and says, "Well, that fellow got it back East, got money back East out of the Government," and he didn't see why he couldn't get it. The conversation was just about what you stated, sir.

Mr. STANLEY MOORE.—Q. Do you recall whether or not he mentioned in what case it was that the fellow had gotten the money back East?

A. Well, no, I would not swear to anything like that, because I don't just remember the words, word for word; I don't just remember that. I remember him stating about the \$50,000 or \$60,000, and mentioned about the man East getting a lot of money out the the Government.

Cross-examination by Mr. SULLIVAN.

I know Mr. J. B. Smith very well. I have known the Smith boys for years and years. I don't have a friendly feeling for them any more than just to say, "How do you do, Mr. Smith?" I have been intimately acquainted with the Smith boys, however, since they were babies. I have no relative employed by Mr. Smith to my knowledge. My mother was never employed in the Smith household in any capacity.

Q. What time of the year did this conversation take place? A. You mean with Mr. Powers?

Q. Yes.

- A. About five months ago, between four and five months ago.
 - Q. Do you remember the time of day it occurred?
- A. Well, I could not say whether it was in the forenoon, or one or two [1228—1167] o'clock, or twelve o'clock. I didn't pay any attention to that.
- Q. And, of course, you don't remember the month?
- A. No, sir, I could not; I should judge about four or five months ago.
- Q. Do you remember in that conversation that Brennan said to Dave Powers, "Why don't you let go of this case, because the Western Fuel Company has too much money to let it go to trial?"
 - A. No such conversation; no, sir.
 - Q. Did he say anything at all to that effect?
 - A. No, sir.
 - Q. Anything like that? A. No, sir.
 - Q. Did Brennan ask him to let go?
 - A. No, sir, not in my presence.

I never spoke to J. B. Smith or Ed. Smith or to any of the employees or officers of the Western Fuel Company or to anybody else about this conversation, except to Mr. Brennan right then and afterward, except, of course, that I was asked concerning it to-day before I was subpoenaed. I was subpoenaed a short time ago on my beat. I never got a bit of fuel in my life except what I paid for and I don't deal with the Western Fuel Company.

Q. What particular case did he refer to as the case

back East, where the man got a large reward and a pile of money?

A. I couldn't exactly tell you, I don't know, but I imagine the one it was, that it was that sugar case, the one he was talking about.

Q. You imagine it was the sugar case? A. Yes. [1229—1168]

[Testimony of Joseph H. Desmond, for Defendants.]

JOSEPH H. DESMOND, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I reside in San Francisco. I am a foreman of the Western Fuel Company, stationed in that capacity sometimes on a chute and sometimes on the runway, working, therefore, at the offshore pockets or on the tracks on top of the bunkers. I have been with the Western Fuel Company very near ever since they took the Folsom Street bunkers. Before that I was employed by R. Dunsmuir & Sons. I was with them five or six years. Therefore, I have been on the bunkers altogether almost fifteen years. I have charge of the top men; that is, the men up on the bunkers.

I am the person who cut out a notch in that one of the two beams under the scales-house which is furthest out toward the end of the bunkers. I cut it out with an axe at the time when I was working for Dunsmuir & Sons. We were at that time handling Roslyn coal which contains very big lumps, some half the size of a car. I therefore cut this

(Testimony of Joseph H. Desmond.)

notch in the beam with my axe to save stoppage and trouble around the scales. If a car goes on those scales so overloaded that the coal would scrape and grind against that beam, the result would be that sometimes the scale would be broken down and sometimes the coal would be thrown off the car. As a matter of fact, I have seen the scales actually break down two or three times from that cause. Even without being ground against the beams at all, the cars are sometimes so fully loaded that their weight is pretty close up to the capacity of the scales. If the coal is loaded too high the men trim it off before they get to the [1230-1169] scales. If they did not do so the scales might be broken down. For that reason Eddie Mayer two or three times gave orders for the men not to load the cars so heavily. I heard him say that and it was my permanent or standing order all the time. I see that those orders are carried out.

When a ship comes alongside the bunkers to be discharged of coal it is my duty to see that a tower or hopper is placed opposite each hatch that is working and that the platforms are all down in their proper places. The platforms are placed under the towers to keep the coal from falling down into the bunker below. We have one or two men employed to clean up such coal as does fall down on these platforms and to shovel it up and put it right back into a car. If I am not present so as personally to oversee the placing of the platforms beneath the

(Testimony of Joseph H. Desmond.)

towers, my men always take care that that is done. I have seen the custom-house officers come down to the dock before seven o'clock in the morning and go down the runway to see if everything is all down and secured under the bunkers there and that there is one platform under each tower. I have also seen the inspectors looking out for that. The inspectors are the men who have charge of all the weighers and go around the steamers and see that everything is all right. I have heard Eddie Mayer severely reprimand the men for bringing the cars up to the scaleshouse overloaded. He hollers out on such occasions in a loud tone of voice. If a train of cars should be dumped before being brought on the scales, the noise would be loud enough to be heard right up to the scales-house. Both of the trains in bringing imported coal up to the scales for weighing are supposed to keep moving all the time and without stop. I have never heard Eddie Mayer say to anybody working down there [1231—1170] on top of the bunkers that he wanted to have a trainload of coal dumped into the bunkers before it was put upon the scales. Occasionally, by accident, it will happen that a chute from one of the hoppers will get stuck by a lump of coal, in which case the coal flows down and off of the car. It is then liable to break the shoe off the car and stop all operations. I recollect such kinds of accidents. The shoe connects the car with the third rail and is the appliance by which the power is communicated to the car. Such coal as overflows through this clogging up of the chute is shoveled back

into the car. It is always thus shoveled back into the car. It is not a fact that such coal is shoveled down into the bunkers.

When I say I sometimes work offshore, I have reference to the loading of the barges. A barge is loaded by means of an electric conveyor which can be moved right along in front of the offshore pockets so as to tap the different pockets. The conveyor can be moved right out to the end of the bunker where there is a turntable. You can move the conveyor right along the side of the bunker as far as the offshore pockets run. The offshore pockets lead out from the front of the bunker toward Goat Island. Where the outer or lower end of the inshore bunkers begin, you can also tap the offshore pockets. We have dumped screenings into those barges without weighing them at all. It sometimes happens that we will have an offshore pocket entirely open and a barge below being loaded at the same time that a ship is being discharged of imported coal, in which case we may be running coal from the ship down to the offshore pockets after said coal has passed over the scales, and, at the same time, be loading screenings which are not weighed at all into that barge. We put the screenings in so as to get an average coal. [1232-1171]

I remember a man by the name of Samuel Griffin who has worked down there on top of the bunkers. He has never been a regular man of any kind. If we ran short and could pick him up we put him on running screenings or something like that.

I was working on the bunkers at the time of the car strike in 1907. It is not a fact, so far as I know, that coal was at that time or ever dumped into the bunkers without being weighed. That has never been done. A custom-house officer would always be present when coal on which the duty was to be paid was weighed from those chutes.

I am acquainted with Mr. David G. Powers. I had two conversations with him on the street-cars. One occurred on the Mission Street car, but I could not say when. I believe it was after this case was going on. I was coming from work at about ten o'clock at night. We had been doing overtime work on a rush steamer.

Mr. STANLEY MOORE.—Then I will ask this question, Mr. Desmond: Is it or is it not the fact that on that occasion Mr. Powers stated to you and said to you, "I'll fix J. B., and I'll get that Jew, Mayer"?

A. Yes, sir.

Q. And that was David G. Powers?

A. Yes, sir.

Cross-examination by Mr. SULLIVAN.

I worked for the Dunsmuir people when my stepfather was the foreman there. He worked for the Western Fuel Company for a while after they took over the Dunsmuir property. His name was Charles Bogen. I worked under him. He never worked as foreman for the Western Fuel Company. He was a kind of a dumper. We were both working in the same capacity. I have no office on the Folsom Street

Dock, nor anywhere. I am generally employed on top of the [1233—1172] bunkers or down on the conveyor. The conveyor lies at the end of the offshore pockets. I am located on the conveyor itself. It is operated by electricity and works along the entire bunker from one end to the other. I am the biggest part of the time on the conveyor. At such times I am located about 20 or 25 feet from the deck or floor of the bunker. I could not tell you whether the greater part of my time during the last seven or eight years has been spent upon the conveyor. I have special charge of it. In answer to the question whether my place is of necessity upon the bunker while the barges are being loaded, I would say that sometimes I am up on top of the bunker and sometimes below, though, as a general proposition in such cases, I am on the conveyor. There are four or five men working up on top of the bunker. Four are operating cars. There are also one or two other men. Eddie Mayer is there. It is their duty to be on top of the bunker all the time. It is not mine. It is my duty to be there when we are getting ready for a steamer so that I may see everything is in perfect order. Then I go down to the conveyor if we happen to be loading anything offshore. I am responsible for seeing that everything is all straight on top of the bunker; seeing that the towers are in place and that the electricity is going all right. It sometimes happens that barges are being loaded at the same time the ship is being discharged. At such times I am on the conveyor.

It was during the Dunsmuirs' time that I cut out the notch in the beam that supports the scale-house. I could not give the exact date. I made the cut kind of round. I could not say how deep I made the cut. I have now and then looked at that arch. I am sure it is not six inches deep. The cut was made at the time the company was importing Roslyn coal. I [1234—1173] cut for the purpose of made the preventing the coal from striking the beam as the cars were approaching the scales, so the coal would not fall down on the scales. I cut only one of the beams. When a car of coal is weighed upon the scales it goes forward before it is switched back and passes the other beam far enough to get entirely clear of it. The other beam is over the scales. The beams are of the same kind exactly and are each of them the same distance over the scales; that is to say, their height is the same.

(The witness was here shown a photograph, U. S. Exhibit No. 5.)

This photograph correctly represents the beams as they are upon the bunker today. I see that the first is "chawed" off and that the second is not. I did not cut an arch in the second beam. I did not understand that if it was necessary to cut the first beam in order to avoid accidents by the striking of the lumpy coal against the beam it would also be necessary to cut the second beam for the same purpose. I cut the arch in that first beam for the purpose of letting the Roslyn coal pass under it without it being struck, and to avoid breaking the scales. That beam

which I cut was exactly level or even with the second beam. The second beam is also over the scales and if any lump of coal struck the second beam and fell down upon the scale it was liable to break the scale, and I never touched the second beam at all with the axe at that time. I did nothing to it for the purpose of preventing the coal from scraping off the car or coming in contact with that beam. I did not notice at all at that time that if the coal projected above the top of the car a sufficient height to strike the first beam, that after I had cut the first beam the same coal would necessarily strike the second beam. I did not understand that if I cut the first beam [1235—1174] to avoid these accidents, that I would necessarily have to cut the second beam. It is not a fact that that first beam was notched out by the overloaded coal striking against it; it was cut off. The reason why it was not necessary to cut out the second beam was this: If a man saw he was going to strike the second beam he would stop the train and clear the coal from touching it. The reason why this precaution was not taken in relation to the first beam also was that the motormen were stationed in front of the motors at the time we cut the notch. The men sat in front instead of between the cars. They could not, therefore, see whether the coal was going to strike the beam. They were in front of the car. On the other hand, having passed the first beam after it was arched out, the motorman would be able to see whether his coal was going to strike the second beam and stop in time. The second beam is a very short distance ahead. It

is immediately above the scale. If any coal struck the second beam it would come down upon the [1236—1174½] scale and would do the same damage as if the coal struck the first beam. I believe the second beam is nevertheless in the same condition as when I went to work for the Dunsmuirs.

The third rail is between the other two rails of the track. If the chutes got clogged, the overflowing coal would fall down on a pitch and go in by the third rail. The side of the car extends a foot or two, more or less, on each side of the track. The coal gets onto the third rail by coming down at both ends of the car. The chutes face the middle of the car. The cars are longer than they are wide. At Folsom Street they are all of the same pattern and have been ever since I commenced to work for the Western Fuel Company, except that they have been improved by additions built up on them to increase their height and provide thereby for a larger load. I couldn't say when that change was made. The drawheads on the cars are not all alike. Some are bigger and of a different pattern. I couldn't say on how many cars the drawheads are alike. The drawheads do not come perfectly flush with one another. There are cases where the drawhead of one car is a little bit higher than that of another car. The links are all straight links and have been ever since I commenced working for the company. I very seldom worked on the Mission Street bunkers, but I have seen the cars in operation there. Those cars are not all alike. Some were small dummy cars and others were some-

thing like the Folsom cars. Nor were the drawheads all alike at Mission Street. I couldn't say whether the links were straight links or not. I never took notice as to whether I ever saw a link with a set-off in it.

I have said that I received instructions not to overload the cars, so as to exceed the capacity of the scales. The capacity of the scales at Folsom Street is, I believe, 25,500 pounds. [1237—1175] couldn't say whether that is the maximum capacity. Two cars are weighed at a time at Folsom Street. I do not know their weight. Mr. Mayer quite often told me to see that the cars were not overloaded. I also heard him giving instructions to the other men. He first gave me that instruction when I began working for the Western Fuel Company and he gave me the same instruction a couple of times afterward. He did not give me that instruction during the last year or during the last two years, and I could not tell you whether he did so within the last five years. I quite often heard him instruct the men working on the bunkers not to overload the cars. He did not repeat that instruction every day. He would holler out these orders from the window, loud enough for the custom officer to hear him. The custom officer always seemed to be present when these instructions were given.

I couldn't say how long it was after the Western Fuel Company took charge that this planking was taken up. I was present when it was done, but I did not take part in ripping up the flooring. Carpenters

did that work. The temporary platforms were made after the bunkers were renewed. Those platforms are all in place underneath each tower, but we have some extra ones ready to put down if necessary. Sometimes the towers are close together, sometimes they are 10 or 12 feet from each other. Sometimes the towers are as much as 100 feet apart. In that case the space between is generally left open. It is the space under the tower that is covered. So far as I know, none of these platforms has been constructed and laid down by the Western Fuel Company within the last three months. I have not seen any carpenters working there within that time, but I would not have had anything to do with such carpenters had they been there. Mr. Schultz would have had charge of them. The carpenter who is always employed there is named Johnson. His name is Jack [1238-1176] Johnson. The other carpenter is Vincent. One of these carpenters is generally employed about the bunkers and the other around the barges and in the yard.

I go to work at seven o'clock in the morning. I remember the car strike of 1907. At that time the custom-house weighers did not get to the bunkers until about eight o'clock. During that strike the ships did not commence discharging as usual about seven o'clock in the morning. They began at eight. Twelve o'clock and five o'clock are respectively the quitting times. The stevedores are employed by the hour, as are also the men on the bunkers, and that has been the practice right along. I am sure too that

the men quit at five o'clock during the strike. The men on the bunkers went to work at seven o'clock as usual during the strike. When I said that the work began at eight o'clock, I was referring to the stevedores and the custom-house officers.

I have put screenings into the barges without weighing them in advance. Those screenings were not weighed by anybody. I couldn't say when I last so deposited screenings in a barge without weighing them. I certainly have seen that occur within the last five years. It was certainly within the period of time that I have been working for the Western Fuel Company. It has happened quite often, but I could not say how many times. In such cases, when the screenings were thus not weighed, the man who dumped the cars would keep a tally of the cars. Every time that the screenings were thus deposited in the barges without being weighed, they were evenly loaded on the cars. The cars were filled. The screenings were the ordinary screenings. They were taken from the screenings bin. There is no record of the quantity of screenings in that bin. As to the method in which [1239-1177] the screenings were brought from the bin to the barge, I would say that we have a switch there which switches right off into the offshore pockets. They open one of the pockets of the offshore bunkers and drop the screenings into the pocket, and the screenings run right down the conveyor and into the barge. I believe Mr. Mayer keps a record of each pocket. They keep a record of the screenings by tallying the cars when-

ever screenings are delivered. I should say that I have seen that done more than a dozen times within the last eight years, but I couldn't give the number of times. It would be more than twice a year.

When coal is being deposited into the hoppers from the ship considerable noise results. The hoppers are lined with sheet iron and when the coal strikes the hoppers from the buckets it makes a report. That noise is constantly occurring when the ship is being unloaded. It exceeds a little in loudness the noise caused by the coal being run from the hoppers into the cars, but the two noises are very near the same. I could not say whether a person sitting in the scales-house could distinguish between these two noises. The noise created by the falling of coal into the bunker below would depend upon whether there was any coal in the bunker already. You could hear the noise even if the bunker below had a lot of coal in it. I could not say whether it would be as loud as the noise created by the loading of the cars or the loading of the hoppers. I could not tell you whether a man in the scales-house could hear coal falling upon coal in the bunker if, at the same time, coal was falling from the tubs into the hoppers and from the hoppers into the cars.

I do not know when Samuel Griffin, an extra man, first went to work for the Western Fuel Company. He was working for the Dunsmuirs when I was there. He worked a couple of times only [1240—1178] for the Western Fuel Company. Sometimes I am off the bunkers. I am not away from the bun-

kers the greater part of the time. When Samuel Griffin was there he worked as a motorman and dumper operating the cars. He did not work off and on for the Western Fuel Company for four years that I know of.

I could not tell you how long I have known Dave Powers. The conversations with Dave Powers to which I have referred on direct examination took place after this case was going on. I could not tell you whether it was in the month of December last or whether it was before last Christmas. I could not say either whether it was before or after the Christmas of 1912. I can't say whether the conversation took place within the last 30 days or two or three years ago, but it was after the case came up; I know that. I cannot fix the time, I cannot fix the year. I couldn't tell you when the conversation took place at all. When the conversation took place I was on the Mission Street car after ten o'clock at night, as I was coming home from overtime work. I boarded the car at East and Mission. Dave Powers boarded car somewhere around Thursday (Third Street?), believe. I was inside of the car when he came in. He sat right in front of me. He rode out to 30th Street where I live and continued past there. I did not know where he was living at the time. I did not engage in conversation with him the entire length of the ride. The conversation was just a couple of minutes. I did not speak of anything else but the Western Fuel Company's case. I do not remember any other part of the conversation except

that part stated by me. In answer to the request that I state exactly what was said by me on that occasion, I would reply that I met Dave Powers on the cars and he said he would get J. B. and this Jew, Mayer. That is all that I can recollect that he said. That is the first thing and all he said. He got on the car at Third and Mission. [1241—1179] From the time that he made that remark until I got off the car at 30th Street he didn't make another remark to me and I didn't say another word to him except just, "That is pretty hard." That was the entire conversation. We talked of nothing else. I did not report that conversation the next day to Mr. J. B. Smith nor to Eddie Mayer. I did not, so far as I know, tell J. B. Smith that Dave Powers was going to get him, nor did I tell Mr. Mills or Ed. Smith, or anybody else. I am almost sure of that. To-day was the first time I ever uttered a word about this conversation except that I spoke to Mr. Moore about it a month ago. Mr. Moore does not represent me in this case. I told him about it in this office. Up to that time I had spoken to no one else. When I was called up to Mr. Moore's office I told him about it and he asked me and questioned me about telling the truth about anything I knew, and I told him.

Redirect Examination by Mr. STANLEY MOORE.
When Dave Powers said he was going to get "J.
B.," I understood that he was referring to Mr. James
B. Smith. I had as little to say to Dave Powers as
I could help. I simply said, "That is pretty hard."
I don't recall the date of that conversation. I do

recall speaking to you about it about a month ago. It was quite a time before that that the conversation took place. It was after the case began, by which I mean the time when the charges were brought in.

At the time when I worked for the Dunsmuirs the bunkers were all planked up on the inside where the towers were operating. The Dunsmuir people had only two offshore pockets, one at the end and one at the sides, and they had a high chute. The Western Fuel Company has 22 offshore pockets at the present time. The carpenters [1242—1180] of the Western Fuel Company built platforms and placed them under each tower of the inshore bunkers. When I said on cross-examination that the bunkers had been renewed, I meant that all new timbers had been put in and the piling driven anew, I don't know how long that work of renewal took. They commenced this work on the inshore part of the bunkers. While the work of renewal was going on they used the towers on the bunkers out toward the middle of the bay.

As I stated on cross-examination, after the bunkers were renewed we first had planks and then platforms. The planks were 2x12, 30 feet long and were placed under each tower that was operated. The platforms are in use to-day.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred:

Q. Are the men who operate and load the trains under you and under your orders?

A. They are under my orders, sir.

- Q. You testified here this morning that you only chopped into one of those scale-beams, did you not?
 - A. Yes, sir.
- Q. You said, in answer to Mr. Sullivan, that at that time, during the time of the Dunsmuirs, the man rode ahead on the coal-cars; is that correct?
- A. Yes, sir, he sat in front at that time; the motor was in front of the cars, during the Dunsmuirs' time. There was a different adjustment than what there is now.
- Q. And will you state whether or not while he was driving his cars, or bringing his train on to the scales, he had to be watching the scales and preparing to have his train under control so that he could bring it to a stop with the cars in the right position?
 - A. Yes, sir. [1243—1181]
- Q. Is it or is it not the fact that when this car passed under that first beam there it would give him an idea, and when he was bringing that car to a stop, as to what the clearness would be in regard to passing over the scale before going under the second beam?
- Mr. SULLIVAN.—We object to that as leading and as suggestive and as calling for the conclusion of the witness.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

Q. Mr. Sullivan asked you as to any changes made in the cars; is it not a fact that after the Western Fuel Company got those bunkers they built the sides of those cars up and the ends of those cars so as to (Testimony of Joseph H. Desmond.)
prevent the coal from falling off of them as far as
possible?

- A. Well, an additional piece was put on the cars.
- Q. It was put on the sides and put on the ends, was it not?
- A. It was put on the top of the car, all around the car.
- Q. Mr. Desmond, whether the coal falls off as the result of striking one of those scale-beams or another, will you state whether or not any of it can fall down into the bunkers below?
- A. No, sir, there is 10 feet—it is all planked in from the scales, and it all goes right on the scales if it hits the scale-beam, it drops and hits the car and goes on the scale again.

Recross-examination by Mr. SULLIVAN.

Mr. SULLIVAN.—Q. At the time you say this conversation took place between you and Dave Powers, notwithstanding the fact that you had been employed by the Western Fuel Company for a long time and that you knew James B. Smith very well and that [1244—1182] you knew Eddie Mayer very well and saw them very often all you said in response to the remarks of Dave Powers was, "that's pretty hard"; is that so?

A. That is all I said, yes, sir.

[Testimony of John Thomas Linehan, for Defendants.]

JOHN THOMAS LINEHAN, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I now reside and have resided all my life in San Francisco, and am now and have been for five or six years in the employ of the Western Fuel Company as motorman and dumper of the first two cars. Ordinarily, there are four cars in a train. When two hatches are working we run two trains. I take care of towers 1 and 2. They are the towers nearest to the scales-house; that is to say, the towers are numbered from one to four inclusive, beginning at the scales-house and running out towards the center of the bay. John Costello is the motorman of the train that runs towers 3 and 4. We are supposed to load the cars so that no coal will run off. Those are our instructions from Mr. Eddie Mayer. I have heard him give that instruction to other men and myself up there a number of times. He vells the orders out in a loud tone. Sometimes more coal comes into the car than we desire by reason of the jam in the chute, in which case we jump up on top quick and knock out the piece of coal that is clogging the chute so that the door will go up. When the coal overflows the car it falls on the platform or between the rails. I mean the platforms that are underneath the towers. This planking is placed under the towers before we start to discharge a ship. I, myself, and the other men up there put the planking [1245-1183]

down; that is part of my duty and a part of the duty of every man there before the ship starts. I have seen the custom-house weighers come down and see that those platforms are in place. I have also seen the Government Inspectors up there looking after that. The purpose of the platforms is to catch the coal that overflows so that it won't go into the bunker. We have one or two men regularly employed to scrape up such coal as overflows onto the platforms and shovel it back into the cars. That has always been done since I have been there.

I know that there are a couple of beams upon which the scales-house rests. Our orders are not to overload the cars so heavily as to strike those beams.

If coal overflows the cars and gets down between the rails the train is crippled, the shoe torn off, and maybe the wires are torn off the train too. I have known that to happen. It has happened to my own train. The consequence is that the discharge of the ship is delayed. It stops the work completely. It was about a month or two ago that this accident last happened. On that occasion the wires were torn off my train and the train caught fire and was crippled for three days.

It is not true that instructions are given down there on that bunker to shovel coal off of those platforms into the bunkers below without its being weighed, nor are there any instructions down there to dump a trainload of cars before it is brought to the scales if we get a chance. I do not know of any trainload of cars being dumped that way before being

brought to the scales. If we did so dump a trainload, you could hear the noise all over the bunkers. would take about five minutes to unload the four cars of the train. It would take about a second for a bucket coming up from the ship to trip into the hopper below. If, [1246—1184] for instance, when a ship was discharging, I tried to dump my train before bringing it to the scales, the customhouse officer would know that there had been something wrong because my cars would be empty and I would be in the way of Mr. Costello and I would have to get out of his way. There is only one track to load on under those towers. If I tried to dump my train, therefore, I would hold him back or I would have to run up to the scales with an empty train which would throw me out of a turn. The trains appear at the scales during the discharge of a ship in pretty regular order. We follow one another all the time. One of the men that we have up there on the bunkers to shovel coal back into the cars when it falls down on the platform is named Vincent, and they hire any other man they can find. The company has had numerous different men. If we dumped a trainload of cars down into the bunkers when they are empty, or nearly empty, you could hear the noise right up to the scales-house. Besides, the bunkers are made of wood. They are slanting on the bottom and are about 20 feet deep. When there is a considerable quantity of coal in the bunkers and we dump a trainload of cars into them, it makes a considerable noise.

It has often happened that in loading the barges

screenings are dumped into the barges without being weighed. We generally chalk down a mark for every load of screenings that we thus take to the barges. Whoever is running the train keeps this tally. Sometimes I have seen coal, after passing over the scales, taken down into the offshore pockets and shot right into the barge. That happens quite often. The company averages the barge coal by putting in screenings. The coal as it comes directly from the ship is more lumpy coal than we deliver to the barges. [1247—1185] It has often happened that the offshore pockets would be open leading directly into the barge and that at one and the same time we would be delivering coal which had been weighed and screenings which had not been weighed directly through the pocket into the barge.

- Q. Mr. Linehan, are you acquainted with Dave Powers? A. Yes, sir.
 - Q. How long have you known him?
- A. Well, I have known him ever since I worked at the Risdon Iron Works, I guess that is about 13 years ago.
- Q. Do you recall ever seeing him or having him mention this case to you?
 - A. Yes, sir, I have met him twice since.
- Q. Will you state whether or not you met him going home one night on the car line of the Third Street line?
 - A. It was on the Mission Street line I met him.
 - Q. On the Mission Street line. A. Yes, sir.
 - Q. Do you recall what the date of that was?

- A. Well, I don't know what date it was; it was sometime in the middle of last year.
 - Q. It was sometime in the middle of last year.
 - A. Yes, sir.
- Q. Was it after the indictments had come up, when there was talk in the newspapers about these cases,—was it after that? A. Yes, sir, it was after that.
- Q. Will you state whether or not he said on that occasion, "I am going to make that Jew sweat?"
- A. He did, yes, sir; he said that not on the first occasion, but on the second occasion I met him on Market Street.
 - Q. What did he say?
- A. He said he was going to "make Jew Mayers sweat," and he asked me if I would go and tell him that, [1248—1186] and I said I would. He asked me two or three times to tell him that.
- Q. And that was when you met him on Market Street? A. Yes, sir.
- Q. When was it that you met him on Market Street?
- A. I guess that was a month after the first time I met him, a month or so, I don't know exactly the date.
- Q. And what was it he said to you upon that occasion? A. Well, he told me—
- Q. And Mr. Linehan, in your opinion that would be how long ago?
- A. I guess 4 or 5 months ago—oh, more than that; I guess about six months ago.

I know the beams on which the scales-house rests. I have heard Mayer, when men would come up there with their cars overloaded, open the window and holler and tell us that he didn't want us to come up that way again; that it would break the scale down. The scale has broken down twice with me from that cause. I do not know exactly what part of the scales it was that broke, but I know that the blacksmith, Mr. Olinder, came up and made a new link.

(The witness, Linehan, was here, by consent of counsel and the Court, withdrawn for the present in order that the witness, Lawrence Brannan, might be put upon the stand.)

[Testimony of Lawrence Brannan, for Defendants.]

LAWRENCE BRANNAN, a witness called for the defendants and sworn, testified as follows: [1249—1187]

Direct Examination by Mr. STANLEY MOORE.

I now live and have lived in San Francisco 55 years next month. I am now and have been for about 40 years in the employ of the Pacific Mail Steamship Company. I am gate-keeper at present and am stationed in that capacity at the gate which leads into the wharf at Pier 42. I have a little house there to protect me from the rain and stormy weather. I was acting as gate-keeper last year. I am acquainted with Mr. David G. Powers, and have been acquainted with him for a good number of years.

Q. Do you recollect a conversation that you had with him sometime last year, in the presence of a police officer by the name of Galloway?

- A. I do, well, sir.
- Q. About how long ago, according to your recollection would that conversation have been?
- A. Well, to the best of my recollection, it was about five months.
 - Q. It was about five months ago? A. Yes, sir.
- Q. Now, Mr. Brannan, I want to ask you whether it is not the fact that on that occasion, and in the presence of yourself and the police officer, Mr. Powers stated to you, either in words or in substance, "Have you seen the papers"—
 - A. (Intg.) Yes, sir, he did.

Mr. SULLIVAN.—Wait a while.

Mr. STANLEY MOORE.—Q. (Continuing.) And that he spoke about the Western Fuel Cases?

- A. Yes, sir, he did.
- Q. And that he said he expected from \$50,000 to \$60,000 from the Government. A. Yes, sir.
- Q. And that some question being asked of him, he said it was a cinch, and that it was dead easy.
 - A. True.
- Q. And that some man back in the East had gotten a big pile of [1250—1188] money in a sugar case?

A. That is right, sir.

Cross-examination by Mr. SULLIVAN.

I am still a gatekeeper for the Pacific Mail Steamship Company. I have been thus employed for about four years. Before that I was watchman on the pier and had been for about 12 years. I know Mr. Chisholm pretty well. He has not talked to me about this case, but I have told him about it and about this

conversation with Mr. Dave Powers. I do not know whether that was before or after Mr. Chisholm testified as a witness in this case; I think though it was before. Mr. Chisholm did not tell me to go to the attorneys on the other side and tell them about it. He gave me no advice about it. It was about a couple of months ago, I guess, that I told him about the conversation.

The conversation itself took place between half past nine and 10 o'clock in the morning. Officer Galloway came along while I was talking to Dave Powers. We had at that time been in conversation about a half a minute and we continued maybe a couple of minutes more. That was the last conversation I had with Dave Powers. Before that I had talked with him nearly every day, or as often as he passed along. I think that was about five months ago, and it was in the summer-time.

Q. Now, just give me the exact language that Dave Powers used on that occasion, as near as you can remember it?

A. Well, he came along and he says, "Hello, Larry, how is everything?" I said, "First rate, Dave. How is everything with you?" He said, "Oh, fine and dandy." He said, "Say, did you see the papers, to-day?" I said, "No, I didn't notice the papers to-day, why?" He said, "The papers are full of it." I said, "Full of what?" [1251—1189] He said, "About the Western Fuel," and he said something about McNab, but I really forget what he said about McNab. He was United States Attorney here at the

time. He said, "Why, there's nothing to it, Larry; this is dead easy, a cinch." I said, "Yes, is that so?" I said, "Bully for you." He said, "I am going to get 50,000 or 60,000 out of this before I am through." I said, "Is that so? Good boy." He said, "Why, you know that fellow back east that tipped off about weighing sugar? Look at the pile he got." I said I read something about it, but I really forget now. So he walked away then and didn't have any more to say on that question.

- Q. Did you congratulate him on his good luck?
- A. Why, sure I did; certainly I did, I told him to go to it.
 - Q. You told him to go to it?
- A. Yes. Oh, by the way, I said, "I wish I could get rich that way." I said, "Dave, I wish I could get rich that way."
 - Q. And you told him that, did you?
 - A. Yes, sure.
 - Q. Was that in the presence of Galloway?
 - A. Yes, sir.
- Q. What way did you mean, when you said you wished you could get rich that way?
- A. That I could accumulate so much money as he was talking about.
- Q. What way did you refer to when you said you told him you would like to get rich that way?
- A. Well, it looked to me as though he thought he was going to get easy money.
 - Q. How did he say he was going to get easy money?
 - A. He had a dead cinch on this Government case.

- Q. Did he say how much he would get?
- A. That the Government would give it to him, like this fellow back east.
- Q. That the government would give him which, the money, or the dead cinch?
- A. I don't know, I don't understand just how it is, [1252—1190] a percentage, or something like that. He said there was about \$50,000 or \$60,000 in it for him.
- Q. Did he say why he was to get the \$50,000 or \$60,000? A. No, he didn't say why.
- Q. Did he say for what cause he was to get the \$50,000? A. No, sir.
- Q. Did he say for what services he was to get the \$50,000 to \$60,000? A. No, sir.
- Q. Or did he say what the consideration was by which he was to get the \$50,000 to \$60,000?
 - A. No. sir.
- Q. Did you understand why he was to get the \$50,000 to \$60,000?
- A. Well, it looked to me that he was so much interested in the Western Fuel cases, that that is the way he was to get it.
- Q. Was he to get it as a dividend from the Western Fuel Company? A. Yes, a percentage.
 - Q. A dividend from the Western Fuel Company?
 - A. Yes, sir.
 - Q. Is that the way you understood it?
- A. Well, no, not exactly. The way I understood it, the Government was trying to get so much money back, and he would get a percentage of so much that it got back.

- Q. Did you understand that this case that is pending at this time, and the case that was pending at that time, was a case to get the money back for the Government?
 - A. I don't quite understand you.
- Q. I say, did you understand that the case that was pending at that time, and the case that is pending at this time, is a case to get the money back on behalf of the Government? A. Yes, sir.

Mr. SULLIVAN.—Q. When you made the remark to him, "I wish I could get money that way," did you mean you would like to get the money in the same way that Dave Powers said he was going to get it?

- A. Well, no, not exactly, but the way he spoke it looked [1253—1191] as though it was finding money, and I would like to find it, too.
 - Q. Now did you understand he was finding it?
 - A. Well, I couldn't explain that, exactly.
- Q. Didn't he give you any explanation at all as to the circumstances under which he was to get the 50,000 or 60,000, or why he was to get it?
- A. Well, it appears as though he was interested for the Government. I suppose that if the Government would gain anything that he would get his percentage of it. That is the only way I understood it.
- Q. Why? Why was he to get any of it? Did he tell you? A. No, he didn't tell me why.
- Q. Did you understand why he was to get some of it?
- A. Well, no, not exactly; that is the way I looked at it though.

- Q. That is the way you looked at it?
- A. Yes, sir.
- Q. Did you have any conversation in relation to anything else besides that?
 - A. Not that day, no, sir.
 - Q. Not that day.
 - A. No, sir, I didn't see him at all that day again.
- Q. Did you, after the finding of the indictments of the Western Fuel Company, keep Dave Powers off the Pacific Mail dock?
- A. Well, now, I couldn't answer that; it was after he came out of prison that I was ordered to keep him off the dock.

Mr. SULLIVAN.—Q. That is about a year ago, is it not? A. Yes, sir, I think it is. [1254—1192]

Mr. SULLIVAN.—Q. Did this conversation take place with Dave Powers after you had received the orders to keep Dave Powers off the dock?

A. Long afterward.

"I could not say whether the conversation took place before the 20th of June, 1913. When Dave Powers asked me if I had seen the papers, I do not know that he referred to any particular paper; I suppose he meant just the daily papers. Shortly after this conversation with Dave Powers took place, I reported it; that is, I mentioned it to Mr. Chisholm. It was maybe a couple of days afterward.

I went in to my boss, Chief Whitman and told him what Powers had said. That was about two minutes after the conversation. I rushed right into Mr. Whitman's office and told him. Mr. Whitman is working for the Pacific Mail Steamship Company. I mentioned the conversation also to Mr. Chisholm, and I think I told my wife and son about it when I went home that night; about how rich Dave Powers was going to get.

- Q. Did you refer to the conversation again afterward in any conversation that you had with Galloway; did you ever speak about the conversation after that day with Mr. Galloway, the officer?
 - A. Did I ever speak to him about it?
 - Q. Yes.
 - A. Yes, I spoke to him yesterday about it.
- Q. Was that the first time you referred to the conversation since you had it last year?
- A. Well, I think it is, to the best of my knowledge. I never paid no more attention to it.
- Q. You were always friendly with Dave Powers up to that time, were [1255—1193] you not?
 - A. Yes, sir.
 - Q. And with his father and with his brother?
 - A. Yes, sir, and I am yet, too.
 - Q. You are still, are you? A. Yes, sir.
- Q. Do you remember that Mr. Dave Powers was a witness against Donaldson, who was the assistant superintendent of the Mail Dock? A. Yes, sir.
 - Q. And you know that in a prosecution by the

(Testimony of Lawrence Brannan.)
United States against Donaldson, Mr. David Powers testified?

- A. Yes, sir, I guess he did; I think he was the main witness..
- Q. And didn't you and the other men employed by the Pacific Mail feel aggrieved because David Powers testified against the assistant superintendent for smuggling opium into this country?

Mr. STANLEY MOORE.—You ask him whether he personally felt aggrieved, as to whether he felt it?
Mr. SULLIVAN.—Yes.

- A. Well, now, I never asked any of the men's opinions about it.
 - Q. Well, you felt aggrieved at him, did you not?
- A. Well, no, not if he was in the right, I would not feel aggrieved at anybody if they were in the right and were telling the truth.

(At this point it was arranged by agreement of of counsel for the respective parties hereto and by order of the Court that the Court and jury should, on the following day, namely, on Thursday, January 29, 1914, view the premises of the Western Fuel Company, including the barges, Folsom Street bunkers, et cetera.) [1256—1194]

[Testimony of John Thomas Linehan, for Defendants (Recalled).]

JOHN THOMAS LINEHAN, on the resumption of his direct examination by Mr. Stanley Moore, testified as follows:

- Q. Mr. Linehan, there was a question I wanted to ask you: With reference to the time that you saw Dave Powers on the street-car that night, do you recollect hearing any conversation concerning the case on that occasion?
 - A. Yes, Dave Powers spoke to me about it.
- Q. Now, I will ask you this question: Will you state whether or not he said in that conversation that he was going to get J. B., and he was going to get the Jew, or he was was going to get that Jew, Mayer?

 A. Yes, those are the very words he said.

Cross-examination by Mr. SULLIVAN.

- Q. That was the second conversation you had with Dave Powers, was it?
 - A. That was the first conversation.
 - Q. The first conversation? A. Yes, sir.
- Q. Where did you have the second conversation with him?
 - A. On Market Street, in front of the Emporium.
 - Q. When did that conversation take place?
 - A. Well, I should judge about a month later.
 - Q. About a month later? A. Yes, sir.
- Q. And in that conversation, he made use of the very same expression, did he?
- A. Well, he said he would make Jew Mayers sweat.

- Q. He would make Jew Mayers sweat?
- A. Yes, sir.
- Q. Is not that the same expression he used on the first interview with you? A. No, sir.
- Q. What was the exact language said in the first interview?
 - A. He said he would get J. B. and the Jew Mayers.
- Q. In your testimony given this morning, you said you met him on [1257—1195] Market Street one night and he said to you, I am going to make that Jew Mayers sweat; that is the fact, is it?
 - A. Yes, sir.
- Q. Now, you didn't say this morning that you had any such conversation with him in the car, did you? A. I was not asked that.
 - Q. Were you not asked that this morning?
 - A. No, sir.
 - Q. Are you positive as to that? A. Yes, sir.
- Q. Do you remember you said this morning that you were going home one night in the car and you met him in the car, about the middle of last year?
- A. I was asked by counsel if Dave Powers said that he would make Jew Mayers sweat, and I said yes.

Mr. STANLEY MOORE.—He is right about that, Mr. Sullivan. I forgot to ask him about the conversation on the car. That is the reason I asked him the question this afternoon. I brought out from him that he met him on the car, and the conversation about making Jew Mayer sweat, he said occurred on Market Street, and my attention was

called to the fact that I had not asked him this morning about the conversation on the street-car—my attention was called to that after adjournment.

Mr. SULLIVAN.—Q. Did he say, "I'll fix J. B. I'll get that Jew Mayer," was that his language?

- A. Yes, sir.
- Q. You know Joseph Desmond, don't you?
- A. Yes, sir.
- Q. Were you present this morning in court when Joseph Desmond testify that he heard Dave Powers say in a conversation that he, Desmond, had with Dave Powers, and Powers said, "I'll fix J. B., and I'll get Jew Mayers"?
 - A. Was I present in court, do you say?
- Q. I mean, were you present this morning when he testified in court to precisely the same language that you have just testified to?
 - A. I was not in court. [1258—1196]
- Q. Have you seen Desmond during the noon hour, have you seen him during the recess? A. Yes, sir.
- Q. And did you and Desmond talk about the testimony that each one of you had given? A. No, sir.
- Q. Didn't he tell you about testifying to having heard David Powers use this exact language on another occasion when Dave Powers said that to him, "I'll fix J. B., and I'll get that Jew, Mayer"?
 - A. No, sir, he did not.
- Q. Can you explain to the jury how it is that you remember that Dave Powers used the precise language in the conversation he had with you that John Desmond says that Dave Powers used in the con-

(Testimony of John Thomas Linehan.)
versation with him, the very exact words, word for word?

- A. We were sitting right close to one another, Dave Powers was right behind us—I can't say whether he was right behind us, or in front of us, but I was sitting right with Joe Desmond when he used those very same words.
 - Q. Were you with Joe Desmond that night?
 - A. Yes, sir, we were working that night.
- Q. Did you go on the car that night with Joe Desmond? A. Yes, sir.
 - Q. Where do you live? A. 72 Albion Avenue.
 - Q. What car did you get on?
 - A. I got on the Mission Street car.
 - Q. Did both of you get on the Mission Street car?
 - A. Yes, sir.
- Q. Where did you meet Powers that night? Was Powers on the car when you got on? A. No, sir.
 - Q. Where did Powers get on the car?
- A. I can't say for sure, but I think that it was at Third Street that he got on.
- Q. You are positive it was a Mission Street car, are you? [1259—1197] A. Yes, sir.
 - Q. Where do you say you were living at that time?
 - A. 72 Albion Avenue.
 - Q. Where is that?
- A. That is between Valencia and Guerrero, 15th and 16th.
- Q. And did you get off the car before Desmond got off the car?

 A. Yes, sir.
 - Q. Where was Desmond living on that occasion?

- A. He lived somewhere out in the Mission, I don't know where exactly.
 - Q. Did the three of you engage in conversation?
- A. Well, I was talking with Joe Desmond when Dave Powers got on, and he slapped me on the back, and he said, "Hello, Jack"; then he says, "How is everything down in the Western Fuel?" I said, "All right." He said, "Are you working late tonight?" And I said, "Yes, a little." Then he mentioned, he said, "Is Jew Mayers scared?" I said I didn't know; he said, "Well, we will get J. B. and the Jew Mayers." That was his conversation.
- Q. What else was said during the course of that conversation?
- A. Well, I can't exactly say what was said; he was talking to Joe Desmond; I didn't pay much attention to what he said.
- Q. Did he keep up a continuous conversation with Joe Desmond? A. Yes, sir, he did.
- Q. From the time he boarded the car until you left it?
 - A. Yes, sir, he was talking with Joe Desmond.
 - Q. All the time.
- A. Well, I can't say all the time, but those were the words he used.
- Q. Did you mention that conversation which you had with Dave Powers to Mr. J. B. Smith the next day? A. No, sir.
 - Q. Or to Mr. Mayer?
 - A. I didn't tell him that, but I told him the sec-

(Testimony of John Thomas Linehan.)
ond conversation, because he asked me to tell
him. [1260—1198]

- Q. Who asked you to tell him?
- A. Dave Powers.
- Q. That is, the conversation you had on Market Street? A. Yes, sir.
 - Q. And you told Mr. Mayer the next day?
 - A. Yes, sir.
 - Q. What did you tell him?
- A. I told him I saw Dave Powers and he told me to tell you he was going to get you, that he was going to make you sweat.
 - Q. How long ago did that conversation take place?
- A. I guess somewhere about five or six months ago.
- Q. Was it before or after Mr. McNab sent in his resignation as U. S. District Attorney?
 - A. I could not say, I don't know.
- Q. Did you speak to anybody else since that about that conversation? A. No, sir, only to counsel.
 - Q. Only to counsel? A. Yes, sir.
 - Q. How long ago was that?
 - A. Several occasions.
- Q. You went to his office on one occasion, did you not? A. Yes, sir.
 - Q. And you made a statement there?
 - A. Yes, sir.
- Q. And did Mr. Desmond accompany you on that occasion? A. Yes, sir.
- Q. In that statement which you made to Mr. Moore, you didn't tell Mr. Moore that Desmond was

(Testimony of John Thomas Linehan.) with you that night, did you? A. Yes, sir.

- Q. You remember the fact that this morning when you were questioned by Mr. Moore, he did not bring out the fact from you that you and Desmond and Dave Powers were in the car when the conversation was alleged to have taken place?
- A. He didn't mention about Desmond, but he asked about the conversation with Powers.
- Q. When you went to Mr. Moore's office and made a statement some [1261—1199] time ago, did you tell him that you and Desmond were in the car with Powers together? A. Yes, sir.
- Q. And you and Desmond went to Mr. Moore's office at the time that you made the statement, did you? A. Yes, sir.
- Q. You say you have had several conversations with counsel; how many conversations did you have with counsel about this conversation?
- A. He didn't ask me always about the conversation, he asked me about different things.
- Q. How many conversations did you have with him concerning your testimony in the case?
 - A. Three or four.
- Q. In each one of those conversations with counsel, did you not refer to the fact that Joe Desmond was with you on the night the conversation you say took place in the street-car with Desmond and Powers?
- A. He never asked me that all the time; he asked me that maybe once or about twice, but that is all.

Q. How long ago was it you first mentioned to counsel that you had this conversation with Dave Powers and with Desmond?

A. I guess about a month ago.

Mr. Costello and I are still employed by the company. When I first went to work, and a number of times, I received instructions from Mr. Mayer never to overload the cars. Those instructions were given quite often and in such a loud voice that they could be heard all over the bunker. The weigher would not be present at the time when those instructions were given. He used to come on the platforms in the morning before the work started and sometimes at the noon hour, but during the actual process of weighing he was usually in the scaleshouse. There is a complete flooring or platform between the rails of the track upon which the cars are loaded. There are temporary platforms put down under the hoists where we load the cars. The platform is not continuous between the track and the southerly [1262-1200] side of the bunker; that is to say, the offshore side. There are platforms under the hoppers or towers. Between the towers the space is open at the present time. That has been the condition as long as I have been down there. Aside from the spaces under the hoppers the entire floor of the bunker was kept open. The inspector generally gets there before seven o'clock in the morning. He does not remain there all day, but I couldn't say exactly how long he does stay. The coal dropping into the cars makes considerable

noise, as does also the coal dropping from the cars upon the coal in the bunkers below. I couldn't say whether the last-named noise is as loud as the former or not. The sides of the cars are opened by pulling a side latch. It does not require much strength to do that. It is true that if the door were pulled open in the space between the hoppers, then, naturally, the coal would fall into the bunkers below. but we are not loading over that space. I guess the door could very easily be pulled open in that space if nobody was watching. I never received instructions to do that. The gate upon the chute leading from the hopper to the car is attached with a wire. There are two chutes to each hopper and those from which the coal drops into the cars are underneath the hopper. The gate comes down when it opens. It is opened with compressed air. It does not require very much strength to open that gate when you have the assistance of the compressed air to the amount of 80 pounds. It is easy to close the door if there is no jam or blocking of the gate by coal. You simply shut the handle off; the gate closes up, and there is a weight of about 300 or 400 pounds that closes it up. No compressed air is required in closing that gate. The compressed air is not working during the noon hour. When the power shuts off the compressed air drops right [1263—1201] away, but not completely. It commences to leave as soon as the "juice" is shut off. There is not enough compressed air left in the tank during the noon hour to open the gate. It is not

true that it takes over an hour for the compressed air to drop down to the point where it will not open the gate. By one o'clock the pressure is all gone. The engine-room is situated in the yard and the electric power comes from there.

I have quite often seen screenings deposited in barges without being weighed. On the other hand, I have seen them frequently weighed on the scales on the top floor of the bunker, but a good deal of the time they are not weighed. I have never seen the books kept by Mr. Mills in my life. I have not recently seen screenings deposited in the barges without being weighed, but I don't always run the screenings. Last year I, myself, ran some screenings into the barges without their being weighed. I don't remember exactly when, or the name of the barge. I know that I did that two or three times last year. I could not say whether I ran any unweighed screenings into the barges in 1912 or not. In answer to the question whether during the last eight years I have deposited screenings into a barge more than half a dozen times without their being weighed, I would say yes. I know that I have done so more than six times. In these cases the screenings were taken from the bin. I made a tally showing the cars that had been loaded and the cars that had not been weighed and made a report thereof to Mr. Mayer. I think they were about medium screenings; I don't know through what mesh they went. Sometimes, however, they were fine and sometimes very coarse.

- Q. You have testified that if you opened your car in front of the car in charge of your companion, Costello, that it would interfere with the management of his car? A. Yes, sir. [1264—1202]
- Q. Suppose he opened his door between the towers and dumped his coal into the bunkers below, that would not interfere with the progress of your car, would it?
- A. They would know that something was the matter; Eddie Mayer would come out and want to know what was the matter, because he didn't make a certain trip on time; the trip is generally made always in a certain time, a certain time for the trip.
- Q. That might happen where you had to hustle and get the cars on the scales very rapidly and back again; does it not very often happen that you are not put to a speed?
- A. No, sir; if there are any delays there at all, Eddie Mayer comes down to see what is the matter, and the custom-house officer generally follows him down, too.
- Q. When they are cleaning up a ship, you don't work fast, do you, when they are getting toward the end of the coal on a ship?
- A. It comes up fast almost all the time. When they clean up a ship, we generally run our trains out of the way on the bunkers somewhere until they start in again.

[Testimony of Thomas R. Stockett, for Defendants.]

THOMAS R. STOCKETT, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. OLNEY.

I reside at Nanaimo, Vancouver Island, British Columbia, and am now, and have been since 1904, Manager or Superintendent of the operations of the Western Fuel Company at British Columbia. I am familiar with the properties of the Western Fuel Company on Vancouver Island which constitute practically all of the properties of said company that are in British Columbia. At the present time the Company has two mines in British Columbia: the No. 1 Mine and [1265—1203] the Northfield. The former is located in the City of Nanaimo and the latter on Departure Bay, about three miles north. In the past the Company also had No. 5 Mine and the Hairwood Mine. These last-named mines dumped and loaded their coal for shipment by water over the same wharf as is used for the coal from Nanaimo No. The Northfield coal is loaded at the wharf 1 Mine. on Departure Bay.

Q. Just state to the jury the location in a general way of the wharf and the loading dock at Nanaimo in connection with the No. 1 Mine or shaft?

A. The No. 1 Mine generally is located near the water's edge in the southern part of the town of Nanaimo and the wharf is about 3700 feet in a northerly direction. Right at the mine the water is not deep enough for the vessels to come; the deep water is out about 3700 feet in a northerly direction.

- Q. What is the location of the dock and the shaft at Northfield with respect to one another, and with respect to the water?
- A. The Northfield mine is right close to the water's edge; there is a rocky bluff at the point, and the water is right deep; the dock and the wharf are right up close against the mine, right close to the shaft, a matter of probably 400 feet. The mine and the wharf buildings are practically one continuous building.
- Q. What is the method of loading vessels at the No. 1 mine?
- A. The coal is brought to the ship at the wharf from the mine in coal-cars, railroad cars; in passing from the mine to the wharf they pass the scale-house, which is located about 1580 feet below the mine, and it is weighed there, and after weighing is passed up to the wharf and dumped on to the vessels.
- Q. Will you describe the method of weighing? You have stated [1266—1204] that the coal was in cars and that it was weighed at the coal-house; describe how the train is handled when the cars are being weighed?

A. The cars hold, generally speaking, about 5 tons, and we make up our train of about 100 tons; that would be 20 cars; they are brought from the mine by the locomotive and are backed on to the scale, one car being weighed at a time, and as each car is weighed it is pushed on down to a tare-track and the next car weighed, and so on until the whole train is weighed. When it is completely weighed it is drawn up to the

scale again and over to the cross-over track and pushed by the locomotive again to the top of the wharf.

Q. Is the locomotive allowed on the scale?

A. No, sir, the locomotives are not allowed on the scale under any conditions.

Q. What is the method of loading at Northfield?

A. At the Northfield mine, on account of the location of the plant being so close to the water we don't have to use railroad cars and the coal after being prepared in the way of screening and cleaning, is taken by a conveyer to the top of the coal-bunkers and distributed through the bunkers, and when it is wanted for the ship it is drawn out from the underneath part of the bunker, the lower part of the bunker, to a second conveyer and conveyed out by a series of conveyers to the ship at the wharf; that is, when coal is taken from the bunkers, up into the bunkers, or taken out. When coal is taken direct from the mine there is a second conveyer that takes it direct to the wharf without passing through the bunkers. It cuts out the use of three conveyers if we send the coal direct to the ship from the mine.

Q. Have you got a plan here of the works at Northfield? A. Yes, sir. [1267—1205]

Q. Is the wharf shown on this diagram you have just shown me with reference to the other buildings?

A. Yes.

Q. Going back to this other plan which you handed me, what is that plan?

A. It is a general plan of the plant at the North-

field mine, showing all the buildings and the wharf.

Mr. OLNEY.—I offer this in evidence, if the Court please.

(The diagram was here marked Defendants' Exhibit "X.")

Q. Now, referring to Defendants' Exhibit "X," which you have just identified, will you point out to the jury on this map where the pit-head or mouth of the shaft is?

A. Here is the pit-head, gentlemen; it is a vertical shaft, it is a vertical hole in the ground—the mine. The coal is brought up through here, the cages, a car at a time, and as it reaches the top it passes along the railroad track, which is on a high trestle here, around in here. Here is the tippling building. By the tippling building I mean the place where the coal is dumped and first enters the screen. In the other section I will show you, you will see the screen and what we call the picking-table below there; it drops first on a shaking-screen; that is a long screen that is mechanically operated. It has perforated holes in it, and the small coal is all riddled out; the small coal goes by a set of conveyers to another part of the building; the lump coal all goes on down past the pickingtables. A chute passes there. It is hand-picked and any foreign matter that may be in the coal, is taken out by hand labor. When the coal is to go to the bunkers it is passed on to one picking-table which operates in this direction and delivers the coal to a conveyer which takes it up at an angle of about 45 degrees to the bunkers, and it is dropped into the

bunkers. When it is to go to the ship direct without going to the bunkers there is a second picking-table that runs out in this direction, and the [1268—1206] same process as to hand cleaning takes place. It meets a conveyer here which takes it to the loading-tower and from the loading-tower it is conveyed by an adjustable shift to the top of the ship, the opening hatch of the ship.

- Q. Point out to the jury where the wharf is?
- A. This is the wharf. This plan does not show the shoreline; the other one does. The shoreline is right in here between the building marked "wharf" and the building marked "picking-table" and the rope-house. The edge of the shoreline is just about there. This is a trestle leading over to the water. The other buildings are the power-house and the boiler-house and the engine-house and the machine-shop and the fans and the stables and the stores, and so on.
- Q. What is the approximate distance between the tippling building and the wharf?
 - A. About 100 or 125 feet.
- Q. Referring to the other map or drawing which you have there, I would ask you if this is a correct diagram of the conveyers in use at the Northfield mine? A. It is.

Mr. OLNEY.—I offer this in evidence and ask to have it marked Defendants' Exhibit "Y."

(The document was here marked Defendants' Exhibit "Y.")

Q. Is this looking at the works horizontally or looking at them vertically?

- A. This one here is vertically and and this one here is horizontal. This plan up here is the horizontal plan, and this is the vertical cross-section, just as if it were cut down through the works; it gives a clear understanding of the screenings and the pickingtables and the works.
- Q. Will you point out to the jury where the tipple-house is? A. It is right here (indicating).
- Q. Now, follow the coal from the tipple-house right through, [1269—1207] first into the bunkers, and then into the ship; first, I will ask you, what is the tipple-house?
- A. The tipple-house is where the coal is dumped after it comes from the shaft; it is the first part of the preparing plant.
 - Q. That is, the first handling of the coal?
- A. Yes, sir, the first handling of the coal after it reaches the preparation plant. These two circular rings represent the dump; that is a revolving dump; that little figure there represents the car as it comes from the mine; when the brake is released here the weight of the coal in the car bears this ring around, that is, turns it around, it is just like a squirrel-cage, the coal is deposited on this chute by gravity. The whole thing is done by gravity. There is no mechanical machinery there excepting a break to stop it. Then it passes to the shaker-screen. The shaker-screen is an incline-screen like that, working by machinery back and forth. The floor of it is of sheet-iron, and it has perforated holes in it of different sizes, according to the different size coal you

want to make. As this works back and forth, the small coal is all screened out, it is riddled out and it passes off to a set of conveyers to a plant where it is washed. The lump coal passes on down and comes over here on to this little arrangement here; and when the coal is to go to the bunkers this movable chute or an apex-chute, it is an apex on wheels and you can move it back and forth from one table to the other. When you want it to go go to the bunker this chute is moved this way and this coal passes down to the picking-table. As it goes to the picking-table there are men standing there on either side picking out the refuse matter. The good clean coal passes on to this conveyer, and it is taken up at an angle of 45 degrees to the top of the bunkers. That [1270— 1208] conveyer runs along the bunkers some 200 feet or more, and the coal is passed into the bunkers through little gates and as this part of the bunker is filled up the gates are closed, and so on, until finally they are all filled.

Mr. SULLIVAN.—Q. Are those pockets?

A. No. It is all one continuous open bunker. These are heavy timbers here on the side to support it.

- Q. They are simply supports? A. Yes, sir.
- Q. Without partitions?

A. Since this was built we put in two small partitions on this end for small coal, one for nut coal and the other for pea coal.

Mr. ROCHE.—Q. Out of what material is that conveyer made that brings the coal over to the bunk-

ers? A. Tron and steel

Q. It is a sort of a continual process, is it?

A. Yes, an endless chain. From this point here to that point there it keeps working around and around all the time.

Q. How wide is it?

A. 3½ feet wide, I think. The picking-tables are 4 feet 6. I think that conveyer is about 3 feet 6; it might possibly be 4 feet.

Mr. OLNEY.—Q. When the conveyer is in operation how do you regulate the discharge of the coal in any particular part of the bunker?

A. There is always a man up here, when this is working, to look after this part of the bunker.

Q. You have a series of gates there on top, have A. Yes, sir, a series of gates.

Q. How many gates?

A. There must be 40 or 50. As one section of the bunker fills up he closes that gate; they are all open when he starts, but as they fill up he closes the gate.

Q. When the gate is closed does not that partition off the coal in a certain part of the bunker?

A. No. [1271—1209]

Q. Why do you have gates there if you have not partitions in the bunkers?

A. It is to save the breakage of the coal after it gets into the bunkers. After you get the natural inclination of the coal, the natural pile as it goes in there we have these gates here about every 4 feet and as one section fills up—not exactly a section, but as one tier fills itself up-

- Q. (Intg.) There is always a slant there, is there not?
- A. Yes, sir, always a slant; the coal is always on that sort of a slant, of about $1\frac{1}{2}$ to one.
- Q. As I understand you, you have a long bunker running along this way and gates in the top about every 4 feet? A. Yes, sir.
- Q. You get the coal started at the end of the bunker nearest the tipple-house? A. Yes, sir.
 - Q. And it lies there in the bunker on a slant?
 - A. Yes, sir.
- Q. And as the coal comes in they take the next gate and the coal simply runs down on this slope?
- A. Yes, sir, and it keeps running down on the slope until the bunker is filled.
- Mr. STANLEY MOORE.—Q. What causes the coal to leave the conveyer and discharge itself through a particular gate?
- A. It drops perpendicularly itself. The hole is right there; when the conveyer comes along the coal simply disappears.
- Mr. McCUTCHEN.—Q. That is, it drops off the end of it?
- A. This conveyer is made out of iron flights, maybe 2 or $2\frac{1}{2}$ feet apart, with a chain on either side; about 3 or 4 feet ahead there is another flight, and so on. The coal is just sliding along. The conveyer is all an iron lined chute and it is dragging the coal along this incline chute. Whenever it comes to one of these gates that are open there is a perpendicular hole, and it drops right down.

Q. What is a flight?

A. A flight is a piece of iron on the conveyer, [1272—1210] with a chain on either side.

Juror MAHER.—It is something in the nature of a scraper, isn't it?

A. Something on that order.

Q. In other words, it is just like a ladder, is it not?

A. Yes, almost like a ladder.

A JUROR.—Q. You might call them cleats, I think.

A. Yes; you might call them cleats, the manufacturers call them flights.

Mr. OLNEY.—Q. You have seen these canvas belts, have you, where the belt itself goes up and acts as a conveyer? A. Yes.

Q. And they dump on the end? A. Yes, sir.

Q. What is the difference between that arrangement and this one?

A. Oh, that is totally different; that sort of a conveyer only conveys at one point—that is, to distribute it. This one will distribute it at any place where you make a gate or a break.

Mr. SULLIVAN.—Q. It is just like a moving ladder, I guess? A. Yes.

Q. And as soon as a space opens at a certain part of the bunker the coal drops down?

A. Yes, sir.

A JUROR.—Q. And there is a platform under the whole length of the conveyer, is there? A. Yes.

Mr. ROCHE.—Q. And that platform really constitutes the top of the bunker? A. Yes, sir.

Mr. OLNEY.—Q. After the coal is in the bunker, Mr. Stockett will you describe how it is taken out of the bunker and put in the vessel?

A. Under the bunker, the full length of the bunker there is a pan-conveyer. That is a different type of conveyer, that only discharges at one point. It is something in the order of the belt-conveyer, but it is made out of iron [1273—1211] pans. That runs all the way underneath the bunker, and underneath the screening plant and everything, and out to this point here, where there is a return-wheel, and the conveyer turns around and comes back and distributes the coal on to this conveyer here, which is exactly the same type of a conveyer, a pan-conveyer, but the break is made here on account of the long length of it, it is too long a length; from that point it is conveyed by this conveyer up an incline about like that, to the top of a tower where it is dropped over the end of this conveyer into the tower and then on that tower, which is about 35 or 40 feet high-

Q. (Intg.) Where is that tower located?

A. It is located on the wharf right close to the vessel, right on the face of the wharf.

Q. In other words, between what is marked picking-table on here, and the top of the tower the coal is passed over the shoreline and on to the wharf; is that correct?

A. Yes; and this loading-tower is right on the face of the wharf, as close up to the ship as it is possible to put it. It is a perpendicular tower, and in this tower there is an adjustable pan that is movable up and down to suit the tides or the height of the vessel.

On this tower is also a movable conveyer which takes the coal from this tower right out over the hatch of the vessel and drops it into the vessel. That conveyer there at the face of the wharf can be raised up or down a distance of about 35 or 40 feet to suit the tide, or to suit the vessel; and in addition to that the rear end can be fixed at any point you want to have it, and the front end can be raised or lowered to help in loading the vessel. That has a pan-conveyer on it and that carries the coal either up the hill, or level, or down the hill, and drops it into the vessel. [1274—1212]

Q. The final result is you get a loading tower on the wharf to which the coal is brought by a conveyer, it is dropped by means of this pan-conveyer, as you call it, right into the hold of the ship?

A. Yes, sir, it goes right into the hold of the ship from the loading-tower.

A JUROR.—Q. Those pans are on belts, are they?

A. They are iron chains on either side, with little rollers or wheels about 3 or 4 inches in diameter about every foot or maybe every 9 inches; that runs along on a little railroad track and the pans are suspended between.

Q. How much will they hold?

A. It is a continuous pan; one laps over the other. The pans are probably about that wide and probably that deep; about 8 or 9 inches wide and about 6 inches deep. You don't fill each pan at a time; as the coal flows into them they make a continuous flow of coal. They are made in that shape in order to turn on the

(Testimony of Thomas R. Stockett.) return end around the sprocket-wheel.

Mr. OLNEY.—Q. Is it possible to send the coal direct from the picking-screens into the ships without passing through the bunkers? A. Yes, sir.

Q. How is that done?

A. The coal, as I described getting to the end of the shaker-screen, this movable apex-chute is moved back that way and the coal slides to a second pickingtable, a picking-table that comes out to the wharf, and the same process takes place there of cleaning the coal. By the time the coal gets out here it is already cleaned, and it is deposited on to this conveyer which runs up to the wharf-tower; so that when we are loading coal direct from the mine to the ship it does away with the use of three conveyers, and sends it direct to the ship without sending it to the bunkers. [1275—1213]

Q. That is, it is possible to send the coal directly from the screening-tables into the ship by a much more direct method than sending it through the

bunkers? A. Yes, sir.

- Q. What is the method of weighing at Northfield?
- A. This is the plan of that.
- Q. Before going into this map which you have already shown me, suppose you refer to the blue-print you had last, Defendants' Exhibit "Y." Point out to the jury on Exhibit "Y" how the coal is weighed at Northfield?
- A. I think I can show it better on the other plan, because this is a very small scale.
- Q. Will you point out the place where the weighing is done?

A. Underneath the bunkers there is a railroad track, right over the top of this conveyer, and on that railroad track are two weighing-hoppers, great big double-size sheet-iron cars practically, with a weighing attachment in connection with it, and these cars or weighing hoppers, as we call them, move back and forth to whichever part of the bunker you want to take the coal out; they hold about 5 tons. As they are filled up and before they are allowed to pass on to the conveyer there is a dial there which shows the weight; and when the car is full the weight is taken: there is a little door at the bottom that is opened, and the coal slides on to the conveyer. Those hoppers have, as I say, a railroad track and move to the full length of the bunkers, any pocket you want to take the coal out of. That railroad track is about on this line here—I am not quite sure that is the right place, but it is about there.

Q. You are pointing to a line above the conveyer?

A. Yes, and the conveyer-chute sticks down in this shape and drops the coal on to the conveyer. [1276—1214]

Q. The bunkers have gates in them.

A. The bunkers have gates on either side, at regular intervals, the full length.

Mr. SULLIVAN.-Q. On the side, too?

A. On either side.

Mr. ROCHE.—Q. Is it a fact that all of the coal that finally finds it way upon that lower conveyer is first weighed in these hopper-scales?

Mr. OLNEY.—We will come to that in a minute, Mr. Roche.

- Q. And this weighing-hopper is a great big bin or car on wheels, which you can move under any one of these gates? A. Yes, sir.
- Q. And after the coal has been dropped into this hopper and weighed there is then a chute by which it is dropped on to the belt-conveyer that takes it out to the wharf?
- A. On to the pan-conveyer which takes it out to the wharf.
- Q. I will ask you if this is a plan of the weighing-hopper?
- A. And the bunkers, yes. This is the detail plan. Mr. OLNEY.—I will ask that this be marked Defendants' Exhibit "Z."

(The diagram was here marked Defendants' Exhibit "Z.")

The WITNESS.—This is a large scale plan of the bunker and a cross-section particularly and a full-length section with a piece cut out. This is where the flight-conveyer comes up from the picking-table and it makes this angle here and then runs along the full length. Right here, for instance, is the first little chute; the coal is right here; the coal drops down and it fills the bottom of the bunker; and then as this is filled that gate is closed; then it fills up in this section.

- Q. Is that a chute or is that timber?
- A. That is the timber.
- Q. That is not a chute.

A. No, that is not a chute. This is [1277—1215] the beginning of the bunker near the picking-table and this is the far end over here. All along here is where the pathway is, you might call it, it is lined with sheet-iron and has the little gates in it about every 4 feet. This shows the timber structure. Here is the flight from there as it passes along. Here is the size and the shape of the flight. That pulls that coal along, and it is dropped through the gates into this bunker. The bottom of the bunker has this shape.

Mr. ROCHE.—Q. Like the shape of an inverted "V"?

The WITNESS.—And here are the gates where the coal comes out of the bunker, one on this side and one on that side. Here is the cross-section of that weighing-hopper; here is the railroad track on which it runs on either side. Here is the footpath for the man to stand on when he operates it. Here is the upper side of the pan-conveyer and here is the lower side. As the coal is wanted in the hopper these little levers are manipulated and the gate opened and the coal forced in from either side, or from both sides, the gates being opposite each other. When this hopper is full these gates are closed and the weight is taken.

Mr. SULLIVAN.-Q. Where is it taken?

A. The weight is taken right on the carriage. The hopper is a suspended weighing-box. The weight is taken automatically. There is a dial there with a hand on it that goes around to the weight,

whatever it may be. When that is all done the gate is opened and the coal is passed on to the conveyer.

A JUROR.—Q. How long does it take for the conveyer to empty the hopper of the five tons?

A. A great deal depends on the speed with which you operate the conveyer. If you run it fast here it will not take so much time.

Q. Is that arranged with a variable speed?

A. Yes, sir. There [1278—1216] is a man sits right at the engine, and we have little button-bells from the wharf to the conveyer, and he regulates the speed according to the signals he gets.

A JUROR.—Q. Suppose they are running it full speed, how long would it take to empty it of the five tons?

A. It is hard to say just in how many seconds or how many minutes, it flows right out.

Q. Just a few minutes?

A. Yes. If the coal is fine coal it will run out faster than if it is coarse. Sometimes it gets blocked in there, and you have to get it out with bars.

Mr. SULLIVAN.—Q. With ordinary speed how much coal could you put into the ship in an hour?

A. I should say that running the two hoppers you could put in 200 tons an hour.

Mr. ROCHE.—Q. Do you fill one of the weighing-boxes while the other one is being worked?

A. Usually.

Mr. OLNEY.—Q. Have you a drawing of that weighing-hopper? A. Yes, sir.

Q. Is this it (pointing)? A. Yes, sir.

Mr. OLNEY.—I will ask to have this marked as an exhibit.

The diagram was here marked Defendants' Exhibit "A.")

The WITNESS.—This is looking at the other side. Here are the wheels of the carriage. Here you see them again. This moves back and forth, wherever you want to load it from. The coal is dropped from the chutes into here. There is a gate manipulated here, a little hinge-gate that comes up in this direction, and it is operated here by a handwheel, with a rope to it. When the hopper is full and the weight is taken by this little dial here this chute is lowered down and the coal flows on to the conveyor. When the coal is out this gate is lifted up again [1279—1217] just enough to stop the coal from flowing out. Here it is in that position there, that dotted line shows where it is filled up, and to keep the next load of coal from flowing out; when you want to empty the hopper you drop that down perpendicularly to the angle at which you want the coal to run out.

A JUROR.—Q. The dial shows the actual weight of the coal.

A. The dial shows the actual weight of the coal. The door is right here in front of the platform where a man stands. It is a regular Fairbanks Scale arrangement, what they call a Hopper Scale.

A JUROR.—Q. About how wide is the opening on that? A. That is 36 inches in width.

Q. What would be the size of the opening?

A. Two feet six; it is marked there "2 foot 6 opening." That is to let the big lumps out. Even at times with that opening it binds itself and you have to go in and work them loose.

Q. What is the size of the pans on the conveyer?

A. About 5 feet; from $4\frac{1}{2}$ to 5 feet in width; they are wider than this chute that comes down from the hopper. I know that the chute has a little play on either side; my recollection is that it is $4\frac{1}{2}$ to 5 feet in width.

Mr. OLNEY.—Q. Is this method of weighing that you have described to the jury the only method of weighing pursued at Northfield? A. Yes, sir.

Q. And that is the only method that has been pursued since you have been there? A. Yes, sir.

Q. Is there any method of loading coal from the bunkers at Northfield without weighing?

A. Yes, sir.

Q. How is that done?

A. It is done through what we call an easement-chute, which does away with the use of the hopper and [1280—1218] the weighing-scale.

Q. Have you a drawing of the easement-chute here? A. Yes, sir.

Q. Is this the drawing which you hold in your hand? A. Yes, sir.

Mr. OLNEY.—I offer this in evidence as Defendants' Exhibit "BB."

(The diagram was here marked Defendants' Exhibit "BB.")

- Q. Will you describe to the jury just how this easement-chute works?
 - A. Will I give the reason for the installation of it?
 - Q. Yes, give the reason for the installation of it.

A. In the handling of the coal through that weighing-hopper we found that on account of the vertical drop from the bottom of the gates in the bunker to the bottom of this hopper there was a considerable breakage in the coal. To start with, there would be a vertical drop of about 7 feet or thereabouts, and as the hopper filled it of course got less, but there was a perceptible and continuous breakage of coal through this weighing-hopper. In order to eliminate that breakage, we devised the idea of what we call an easement-chute in order to pass the coal right from the mouth of the gates of the bunker down on to the conveyer without any perpendicular drop; in other words, wiping out entirely the perpendicular drop. To do that we devised an arrangement that is shown on this plan which in our parlance is called an easement-chute. We use the same railroad track that the weighing-hoppers run on; instead of two wheels we have a truck with three wheels on-that is because of the length; the easement-chute goes right up to the mouth of the gates from the bottom of the bunker; so that right along there would be the bottom of the gate; there is only about an inch play or freedom there. Instead of coal dropping right down to here, as it does in the weighing-hoppers, it simply drops [1281—1219] on to this incline and passes on down right here to the conveyor; the con-

veyer runs right on this spout here. In order to further do away with breakage, instead of letting the first of that coal get a long run in the chute down here like out of a cannon, we have a little gate here which is operated by the man who stands here, with a hand-lever; he pulls that gate up and that checks the coal, so that the rough handling of the coal is only on the first portion which comes from there to here; he does not permit the coal to pass below this point faster than it is coming in from the hopper above, from the gates of the bunker; if he finds there is an interruption from a blockage of the gate, or from any other cause, he immediately operates the lever and stops the coal coming and only this little bit flows on down. This was the result of considerable experiments and had been found to be a great success.

- Q. Is that adjustable?
- A. It is to the extent of 24 degrees. We found that that was a good average pitch for that coal to start to run itself on.
 - Q. And that is lined with iron?
- A. Yes; practically the whole thing is iron except the main timbers. And that also runs the full length of the bunkers.
- Q. What do you mean by running the full length of the bunkers?
- A. This track which carries the easement-chute can be pushed along under the full length of the bunkers, just the same as the weighing-hoppers. You can place it under any gate or under any por-

(Testimony of Thomas R. Stockett.) tion of the bunker you want to. [1282—1220]

(At this point, and, namely, on Thursday, January 29, 1914, the Court and Jury visited the premises of the defendant, Western Fuel Company, including the bunkers, barges, etc., on the San Francisco waterfront, and witnessed, among other things, the discharge by buckets of coal intended for fuel purposes from a barge into an American registered vessel.)

Mr. OLNEY.—Q. * * * Now, just what was the purpose of this easement-chute with relation to these weighing-hoppers?

A. The easement-chute was to take the place of the weigh-hoppers for the purpose of avoiding the breaking of the coal in passing the coal from the bunkers to the conveyers that carry the coal to the ship.

Q. In other words, when the easement-chute was used the coal would not be weighed?

A. The coal was not weighed; it was passed directly from the bunkers to the conveyors.

Q. When was this easement-chute installed?

A. It was installed in the latter part of February and the first part of March, 1906; the first day that it was used was in loading a ship on March 16, 1906.

Q. Have you used it since?

A. We have used it in all cases of shipments of coal to the ocmpany at San Francisco since that time.

Q. Now, did this easement-chute have any other advantages besides the prevention of the breakage of coal? A. Yes.

Q. What were they?

A. It reduced the time of passing the coal from the bunkers to the conveyor by practically one-half, and it followed that it reduced the time of putting the coal on board the ship about one-half; in other words, it cut the course of loading coal from the bunkers to the ship right in two, and it started the ship off within about half the time that it would [1283—1221] have taken otherwise; both of those were quite important items.

Q. Now, to what extent has this practice of using the easement-chute and not weighing the coal loaded at Northfield for San Francisco been followed since the installation of this easement-chute?

A. It has been invariably used in the passing of coal from the bunkers to the ship since that time.

Q. Now, has this practice applied to whole cargoes, or partial cargoes from Northfield to San Francisco, or to all coal, whether it was part cargo or the whole cargo?

A. All the coal whether whole cargo or part cargo.

Q. Why was not a similar practice in regard to weighing followed at No. 1 Mine?

A. There was no need to follow that custom or practice at No. 1 Mine, because the coal was in cars, or if it was in the bunkers it was necessary to put it in the cars before it could be passed to the ship, and the speed of loading ships at No. 1 was considerably larger than at the Northfield Mine under the old system; in other words, to dump them into the ship as fast as the ship could take them at No. 1.

Coal loaded at Nanaimo for points other than San Francisco was weighed because it was necessary to know the exact amount in order to make out the proper bills and charges. It was not necessary in the case of coal sent to San Francisco because that coal was going to different departments of the same coal company, and the advantage of loading it without breakage was quite material. In the absence of weighing, the coal weights from Northfield were obtained by estimates which were generally made by the draught of the boat. Cargo boats have what they call a ship's scale which means so many tons per inch of draught. The draught of a boat would be taken on arrival and then again when we were through loading the boat, [1284-1222] quantity would be estimated from the ship's scale and arrived at as closely as we could in that way.

The first vessel which took coal from Northfield after this practice of weighing went into effect was the Norwegian Steamer "Turge Viking." At that time I received a report from the wharf-master, or a person occupying an equivalent position, in regard to loading this vessel. That is the report which is now shown me. (This report antedating the shipments of coal referred to in U. S. Exhibit No. 125, Table A, and counsel for the Government objecting to its introduction in evidence on this ground, it was arranged that the introduction of this document should be deferred so as to give counsel for the Government an opportunity to compare its figures with the corresponding entry in the United States

(Testimony of Thomas R. Stockett.) custom-house books. Counsel for the Government having done so and having admitted that the bill of lading or invoice figures in the custom-house books with reference to that shipment were the same as the figures contained in the report to be introduced in evidence, the following proceedings ensued:

Mr. OLNEY.—Now, I renew the offer of this report in evidence.

Mr. ROCHE.—Of course, neither the bill of lading nor the invoice so far as that particular boat is concerned have been introduced in evidence. We renew the objection heretofore made by us when the offer was heretofore made.

The COURT.—The objection is overruled. The document is admitted not for the purpose of showing the correctness of the weights there, but for the purpose of showing the method of arriving at them.

Mr. OLNEY.—Yes, sir; that is the only purpose for which we put it in. It reads as follows: [1285—1223]

[Defendants' Exhibit "CC"—Loading Report of S. S. "Torje Viken."]

S. S. "Torje Viken," 18 March, 1906.

Loading Report.

Arrd Nan 11.00 A. M. 13th Mch-06 Docked 11.10 Ready 12.00 66 Began 12.15 Finished 15th 66 9.00 P. M. Sailed for Nfd 66 6.15 A. M. 16th Ships Draft Fwd. 23'8" Aft. 23.11

Mean 23' 91/2"

Cargo.

Nanaimo	3618.4	Hause
Northfield	2241.16	"
Weighed in	5860. 0	
Ships Bunker	$210. \ 0)$	Estimate of Coal on
Hold	95. 0)	board on arrival
Fresh Water	60. 0)	and F. W. in boilers etc.

Coal not weighed at Northfield.

6225, 0

D. W.

Reckoning of Cargo taken from a D. W. of 6110 tons on a Mean Draft. 23'6"

Filled ship papers 100 tons less than weighed in or 5760 tons.

(Signed) WM. COUNDLEY.

- Q. What does "D. W." stand for?
- A. Dead weight.
- Q. What does "F. W." stand for?
- A. Fresh water.

(The document was marked Defendant's Exhibit "CC.") [1286—1224]

- Q. I notice on here that there is an item of 95 tons in the hold, and it says, "Estimate of coal on board"; was it or was it not frequent for vessels to return from San Francisco to Nanaimo with some coal left in the hold? A. Yes, sir.
- Q. Was the same practice followed in all of the other cargoes from Northfield, Mr. Stockett, as is represented by this report? A. Yes, sir.

Q. Who was Coundley?

A. Coundley was the wharfinger; he had charge of the dispatching of ships.

I have prepared a statement of all the cargoes loaded from the No. 1 shaft or Northfield for San Francisco from April, 1906, when the practice I have heretofore referred to in making estimates on the cargoes went into effect, to December 31, 1912. That is the table which is now shown me and is prepared from the records of the Nanaimo office which are the original records from which the estimated weights or actual weights on the bills of lading and invoices were made up. That list includes all of the San Francisco cargoes from Nanaimo during the period specified. Referring to this table, in 1906, the total number of cargoes loaded and shipped were

25; 9 of these came from No. 1 alone and 16 came, either in whole or in part, from Northfield. In 1907 there was a total of 25 cargoes shipped of which 3 were loaded exclusively at No. 1 Mine and 22, in whole or in part, at the Northfield Mine. In 1908 there was a total of 12 cargoes, 1 loaded exclusively at the No. 1 Mine and 11, in whole or in part, at Northfield. In 1909 there was a total of 24 cargoes, 1 loaded exclusively at No. 1 Mine and 23, in whole or in part, at Northfield Mine. In 1910 there was a [1287—1225] total of 20 cargoes, of which the entire number were loaded, in whole or in part, at Northfield Mine, some (none?) being loaded at No. 1 Mine exclusively. In 1911 there was a total of 27 cargoes, one loaded exclusively at No. 1 Mine and 26, in whole or in part, at Northfield Mine. In 1912 there was a total of 33 cargoes, one loaded exclusively at No. 1 Mine and 32 in whole or in part at Northfield Mine. For the entire period of seven years from 1906 to 1912 inclusive, there was a total of 166 cargoes loaded and shipped, 16 exclusively at No. 1 Mine and 150, in whole or in part, at the Northfield Mine, 91% therefore being loaded, in whole or in part, at the latter mine and 9% exclusively at No. 1 Mine. The weights of the cargoes loaded at No. 1 Mine were the actual scale weights, not estimated weights. The weights of the cargoes loaded in whole or in part at Northfield were estimated weights throughout the time covered by this statement.

Q. Has it been the practice of the Nanaimo office at any time to make a deduction from what I may call

(Testimony of Thomas R. Stockett.)
the loading weights in order to get the bill of lading
weight? A. Yes, sir.

Q. Will you state the history of that practice and the reason for it?

A. When we began the estimation of the boats—of the coal—loaded at Northfield Mine on March 16, 1906, we started a practice of making the bill of lading weights on large cargoes 100 tons and on small cargoes 50 tons less than our estimated weight, doing that for the purpose of being on the safe side, knowing that the estimate was subject to so many conditions of variation that it was impossible to get at it accurately; and the system of making this deduction was done for the purpose of safety, being on the safe side, not over-estimating. That [1288—1226] practice continued until November, 1907.

Q. What took place then?

A. Beginning with the cargo loaded November 16th, I think it was, 1907, we ceased making any difference between the estimated weight and the bill of lading weight. That continued until September, 1907—

Q. (Intg.) November, 1907?

A. No, it was September, 1908. In September, 1908, we re-introduced the custom of making a deduction between the estimated and the bill of lading weight, and instead of fixing it an even tonnage we made it on the basis of 3 per cent. That continued until June, 1909, at which time we started the custom or practice of making the deduction of one per cent between the estimated weights and the bill of lading

(Testimony of Thomas R. Stockett.) weights; that practice has continued up to the present time.

- Q. You stated that up until November, 1907, you made a deduction of 100 tons on large vessels and 50 tons on small ones, and in September discontinued that practice; and in September, 1908, you resumed the practice of making a deduction that way but made the deduction simply 3 per cent; what took place at that time which led to the resumption of this practice of making a deduction; that is, in September, 1908?

 A. We were over-estimating the cargoes.
- Q. Did anyone take the matter up with you? How did it come up?
- A. It came up—no, I don't recall that anybody took that up with me particularly as to the making of that deduction, but I was told that we were overestimating, that the cargoes were running short, and that our estimates must be carelessly made or must be wrong.
- Q. Did you have any discussion with anybody about it?
- A. Mr. Howard was up there in August of that year, and the probabilities are that the matter was discussed with him. [1289—1227]
- Q. Have you completed your answer in regard to the reasons for resuming the deduction in September, 1908?
- A. Further than that he told me to be particularly careful in the estimates. Knowing that the tendency of employees around the wharves would be to overestimate I took the position of making the deduction

3 per cent so as to be sure of being on the safe side.

Q. Why did you drop back to one per cent subsequently?

A. I received a communication from the Secretary of the company instructing me—

Mr. ROCHE.—Just a minute. We object to the witness testifying concerning the contents of the communication unless the communication itself is produced.

Mr. OLNEY.—Q. Have you that communication? A. I have, sir.

Q. Will you produce it? Is that the communication which you hold in your hand? A. Yes, sir.

Mr. OLNEY.—We offer this in evidence and ask to have it marked Defendants' Exhibit "DD."

Mr. ROCHE.—No objection to that letter going in.
Mr. OLNEY.—I will read the letter, gentlemen of
the jury. It is dated at San Francisco, on the letterpaper of the Western Fuel Company, dated July 9,
1909, and reads as follows:

[Defendant's Exhibit "DD"—Letter, Dated July 9, 1909, from D. C. Norcross to Western Fuel Company.]

"San Francisco, July 9, 1909.

Western Fuel Company,

Nanaimo, B. C.

Dear Sirs:

Regarding the billing of coal under the actual weight, in the past you have been deducting three per cent from the actual. Hereafter, you will reduce this to one per cent as there does not seem to be any

necessity [1290—1228] for such a heavy allowance. On the last six cargoes received the actual weight was 36,347 tons, turned out 35,882 tons, a shortage slightly over one per cent.

Yours truly,

D. C. NORCROSS,

Secretary."

The list or statement to which I have heretofore referred, prepared by me shows the loading weights of the various cargoes during the period specified and the bill-of-lading weights. It also shows the proportion of the cargoes loaded at the No. 1 Mine and the proportion estimated to be loaded at the Northfield Mine.

(Said table or statement was here introduced in evidence as Defendants' Exhibit "EE," and is in words and figures as follows:) [1291—1229]

[Defendants' Exhibit "EE"—List Showing Loading Weights of Various Cargoes.]

SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.

Name of Vessel		Loaded at		Totals.
110000	37 1		T 3/	Bill
	No. 1 Mine.	Northfield Estimated	Loading Weights	Lading and Inv.
1906.				
Apr. 4. Terje Viken		2,425	2,425	2,325
7. Reidar	3,717		3,717	3,617
12. Titania	3,327	2,481	5,808	5,708
18. Terje Viken	4,005	19	4,024	3,924
May 8. Titania	4,556	1,244	5,800	5,700
11. Tellus	1,992	1,696	3,688	3,588
26. Titania	2,818	3,042	5,860	5,760
June 5. Terje Viken	2,846	3,050	5,896	5,796
16. Titania	3,818	2,072	5,890	5,790
July 6. Titania	5,655		5,655	5,655
20. Terje Viken	3,567	2,233	5,800	5,700
Aug. 5. Terje Viken	5,685		5,685	5,685
13. Titania	2,962		2,962	2,912
28. Terje Viken	5,908		5,908	5,808
Sept. 1. Titania	3,474		3,474	3,424
17. Terje Viken	3,541		3,541	3,541
Oct. 13. Terje Viken	5,903		5,903	5,853
23. Blackheath	3,705		3,705	3,665
Nov. 3. Titania	4,395	1,340	5,735-	5,705
10. Tordenskjold	1,505	1,762	3,267	3,267
19. Tellus	3,091	686	3,777	3,727
27. Titania	4,007	1,758	5,765	5,665
Dec. 7. Hercules	5,286	1,160	6,446	6,396
14. Tellus	3,443	161	3,604	3,554
21. Titania	3,397	2,159	5,556	5,456
Loaded in whole or in par	92,603	27,288 thfield	119,891 16 ca	118,221
Loaded exclusively at No.			9	"
		m		
[1292—1230]		Total	25	66

SHII	PMENTS FROM N Name of Vessel	ANAIMO, B	. C., TO SAN Loaded at	FRANCI	SCO. Totals.
		No. 1	Northfield	Loading	Bill
		Mine.	Estimated.	Weights.	Lading and Inv.
1907.					
Jan. 18.	Titania	3,847	1,745	5,592	5,542
29.	Condor	2,628	1,706	4,334	4,234
Feb. 6.	Tellus	1,618	1,988	3,606	3,531
23.	66	3,558		3,558	3,528
Mar. 16.	Torndenskjold	922	4,4856	5,778	5,678
26.	Titania	2,489	3,232	5,721	5,621
Apr. 13.	Tellus	2,509	1,280	3,789	3,689
27.	Titania	2,682		2,682	2,629
May 8.	Torndenskjold	2,905	2,918	5,823	5,723
25.	Hornelen	1,289	3,838	5,127	5,027
June 8.	Torndenskjold	3,021		3,021	2,971
18.	Hornelen	3,179	2,846	6,025	5,975
July 3.	Tordenskjold	649	2,068	2,717	2,667
17.	Hornelen	3,784	2,264	6,048	5,948
Aug. 14.	Tellus	1,365-	2,236	3,601	3,551
22.	Torndenskjold	4,005	1,889	5,894	5,794
29.	Tellus	2,098	1,499	3,597	3,547
Sept. 6.	Hornelen	3,917	2,240	6,157	6,057
27.	46	2,472	3,324	5,796	5,696
Oct. 11.	Torndenskjold	4,086	1,772	5,858	5,758
25.	Hornelen	1,955	1,933	3,888	3,788
Nov. 14.	Hornelen	4,730	1,535	6,265	6,165
23.	Torndenskjold	3,571	2,282	5,853	5,853
Dec. 3.	Hornelen	4,073	2,211	6,284	6,237
20.	Tordenskjold	3,490	2,475	5,965	5,965
		70,842	52,137	122,979	121,174
Load	ed in whole or in	part at Nort	hfield	22 car	goes
Load	led exclusively at N	No. 1 Mine		3	
f1903 14	2917		Total	25	

[1293—1231]

SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.

	Name of Vessel		Loaded at		Totals.
		No. 1 Mine.	Northfield Estimated.	Loading Weights.	Bill Lading and Inv.
1908.					
Jan. 16.	Hornelen	6,425		6,425	6,425
30.	Titania		5,705	5,705	5,705
Mar. 18.	Hornelen	2,290	3,954	6,244	6,244
Apr. 14.	Titania	645	5,057	5,702	5,702
May 23.	Thor	1,540	5,865	7,405	7,405
July 11.	Thor	72	7,215	7,287	7,287
31.	Tordenskjold	1,750	4,230	5,980	5,980
Sept. 26.	Tordenskjold	3,764	2,058	5,822	5,647
Oct. 13.	Titania	4,160	1,712	5,872	5,696
Nov. 23.	Thor	832	6,449	7,281	7,063
Dec. 2.	Torndenskjold	3,282	2,670	5,952	5,773
24.	Titania	2,962	2,981	5,943	5,765
		27,722	47,896	75,618	74,692
Load	ed in whole or in pa	art at Nort	hfield	11 ca	rgoes
Load	ed exclusively at 1	Vo. 1 Mine		1	
		Tot	al	12	

[1294-1232]

SHIP	PMENTS FROM NA Name of Vessel.	NAIMO, B	C., TO SA Loaded at	N FRANC	ISCO. Totals.
					Bill
		No. 1	Northfield	Loading	Lading
1000		Mine	Estimated	Weights	and Inv.
1909.	Mita-ia	0.501	3,272	E 0.00	E C07
Jan. 26.	Titania	2,591 2,638		5,863	5,687
Feb. 12.	Thor Titania	3,229	4,67 4 2,619	7,312 5,848	7,093
26.		′	<i>'</i>	,	5,673
Mar. 13.	Thor	2,614	4,693	7,307	7,088
21.	Wellington	512	1,842	2,354	2,284
Apr. 8.	Thor	2,135	5,197	7,332	7,112
22.	Titania	2,477	3,409	5,886	5,710
May 15.	Thor	2,420	5,002	7,422	7,200
26.	Wellington		2,376	2,376	2,305
June 5.	Thor	4,824	2,508	7,332	7,112
17.	Titania	2,786	3,213	5,999	5,819
26.	Thor	3,675	3,712	7,387	7,165
30.	Wellington	1,216	1,178	2,394	2,322
July 17.	Titania	1,021	4,878	5,899	5,840
Aug. 5.	Thor	3,272	4,120	7,392	7,318
19.	Titania	1,216	4,745	5,961	5,901
Sept. 17.	Titania	2,190	3,652	5,842	5,784
18.	Wellington	2,363		2,363	2,339
Oct. 5.	Wellington	586	1,767	2,353	2,329
11.	Thor	1,646	5,753	7,399	7,325
22.	Wellington		2,336	2,336	2,313
Nov. 5.	Thor	3,589	3,702	7,291	7,218
18.	Leelanaw	1,109	1,717	2,826	2,798
Dec. 3.	Thor	3,115	4,273	7,388	7,314
		51,224	80,638	131,862	129,049

Loaded in whole or in part at Northfield 23 cargoes Loaded exclusively at No. 1 Mine 1

Total 24

[1295-1233]

SHII	PMENTS FROM NA	NAIMO, I	B. C., to SAN	FRANCI	SCO.
	Name of Vessel.		Loaded at		Totals
					Bill
		No. 1	Northfield	Loading	0
1910.		Mine.	Estimated	Weights	and Inv.
Jan. 29.	Thor	5,458	1,832	7,290	7,217
Feb. 22.	Thor	3,925	3,292	7,217	7,145
Mar. 9.	Leelanaw	818	1,955	2,773	2,745
15.	Thor	5,282	2,019	7,301	7,228
26.	Thode Fagelund	3,102	3,663	6,765	6,698
Apr. 30.	Thor	3,767	3,599	7,366	7,293
May 7.	Leelanaw	1,700	1,093	2,793	2,765
30.	Thor	4,258	3,165	7,423	7,348
July 2.	Jethou	3,727	3,213	6,940	6,871
16.	Thor	4,107	3,326	7,443	7,359
Aug. 5.	Thor	4,010	3,448	7,458	7,384
18.	Leelanaw		2,824	2,824	2,796
27.	St. Nicholas	2,477	1,630	4,107	4,107
Sept. 20.	Thor	4,528	2,748	7,276	7,203
Oct. 8.	Leelanaw	448	2,338	2,786	2,759
21.	Falls of Orchy	3,484	3,424	6,908	6,839
27.	Leelanaw		2,826	2,826	2,798
Nov. 18.	Leelanaw		1,635	1,635	1,619
Dec. 3.	Cuzco	2,250	3,634	5,884	5,825
17.	Thor	3,589	3,628	7,217	7,145
		56,930	55,292	112,222	111,144

Loaded in whole or in part at Northfield 20 cargoes Loaded exclusively at No. 1 Mine. 0

Total 20

[1296—1234]

SHIPM	ENTS FROM NAN Name of Vessel.	AIMO, B.	C., TO SA		CISCO.
					Bill
		No. 1	Northfield	Loading	Lading
1011		Mine	Estimated	Weights	and Inv.
1911.	75 C 70 11	0.040	0.700		
Jan. 6.	M. S. Dollar	3,246	2,790	6,036	5,976
21.	Thor	3,922	3,394	7,316	7,243
Feb. 11.	Thor	4,171	3,095	7,266	7,193
20.	Tordenskjold	2,482	3,305	5,787	5,729
Mar. 2.	Thor	4,020	3,246	7,266	7,193
15.	St. Ronald	1,626	4,141	5,767	5,709
Apr. 7.	Henley	1,582	3,426	5,008	4,958
14.	Titania	3,357	2,274	5,631	5,575
26.	Thor	2,451	4,930	7,381	7,307
May 18.	Thor	3,449	3,937	7,386	7,312
June 4.	Thor	4,881	2,555	7,436	7,362
17.	St. George	471	984	1,455	1,441
19.	Lonsdale	2,636		2,636	2,610
21.	Thor	4,655	2,779	7,434	7,360
July 7.	Boveric	3,916	2,684	6,600	6,534
15.	Coulsdon	3,335	3,330	6,665	6,598
Aug. 4.	Damara	4,838	2,752	7,590	7,514
11.	Tricolor	879	3,581	4,460	4,415
21.	Candidate	1,732	1,366	3,098	3,067
26.	Thor	534	2,823	3,357	3,323
Sept. 9.	Senator	2,150	2,998	5,148	5,098
28.	Thor	576	4,108	4,684	4,684
Oct. 7.	Bannockburn	4,079	3,441	7,520	7,445
11.	Belle of Scotland	821	685		1,506
28.	Thor	2,745	4,546	1,506	7,218
		·		7,291	
Dec. 2.	Mathilda	2,623	3,774		6,333
29.	Thor	2,401	4,888	6,397 7,289	7,216
		73,578	81,832	155,410	153,919

Loaded in whole or in part at Northfield 26 cargoes Loaded exclusively at No. 1 Mine 1

Total 27

[1297-1235]

The United States of America.

SHIP	MENTS FROM NAT Name of Vessel.	NAIMO, B.	C., TO SAN Loaded at		SCO. otals. Bill
		No. 1	Northfield	Loading	Lading
1912.		Mine	Estimated	Weights	and Inv.
	Thor		2,000	2,000	2,000
Feb. 3.	Wellington		2,350	2,350	2,507
9.	Thor	5,124	2,041	7,165-	7,093
16.	Wellington	236	2,141	2,377	2,353
27.	Thor	4,174	2,995	7,169	7,097
Mar. 11.	Ikalis	4,449	2,117	6,566	6,500
18.	Wellington		2,318	2,318	2,295
31.	44		2,266	2,266	2,243
Apr. 5.	Thor	5,600	1,634	7,234	7,162
12.	Wellington	638	1,717	2,355	2,331
24.	Ikala	2,817	3,818	6,635-	6,569
May 8.	Wellington		2,383	2,383	2,359
18.	44	771	1,688	2,459	2,434
28.	Christian Bors	1662	1,897	3,559	3,559
30.	Wellington	1505	864	2,369	2,345
June 11.	Wellington	1,507	852	2,359	2,415
25.	"	706	1,689	2,395	2,371
July 6.	Wellington	42	2,397	2,439	2,415
12.	Thor	5,677	1,575	7,252-	7,180
18.	Wellington	968	1,428	2,396	2,372
22.	Solveig	1,231	810	2,041	2,041
30.	Gifford	5,321	1,525	6,846	6,846
31.	Wellington	267		267	267
Aug. 20.	Wellington	979	1,400	2,379	2,355
Sept. 10.	Ikalis	1,488	5,007	6,495	6,430
18.	Wellington	553	1,774	2,327	2,304
Oct. 5.	Wellington	804	1,445	2,249	2,227
26.	46	9	2,260	2,269	2,246
Nov. 19.	Queen Elizab.	3,022	3,813	6,835	6,767
23.	Wellington	8	2,263	2,271	2,248
Dec. 6.	Wellington	65	2,186	2,251	2,228
24.	66		2,251	2,251	2,228
31.	Leona		761	761	761
		49,623	65,665	115,288	114,548

Loaded in whole or in part at Northfield 32 cargoes.

Loaded exclusively at No. 1 Mine

Total 33

1

SUMMARY

SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.

From April, 1906, to December, 1912, Both Inclusive.

Loaded at

		aea at	
	No. 1	Northfield	Loading
Year.	Mine.	Estimated	Weights
1906	92,603	27,288	119,891
1907	70,842	52,137	122,979
1908	27,722	47,896	75,618
1909	51,224	80,638	131,862
1910	56,930	55,292	112,222
1911	73,578	81,832	155,410
1912	49,623	65,665	115,288
	422,522	410,748	833,270
	Cargoes Loaded in		Cargoes Loaded
	Whole or in Part		Exclusively at
	at Northfield.		No. 1 Mine.
Year.			
1906	16		9
1907	22		3
1908	11		1
1909	23		1
1910	20		0
1911	26		1
1912	32		1
	150		16)
[1299-12			/

Q. Mr. Stockett, I show you a bill which has been introduced in evidence here by the prosecution as part of a file of bills received at the office here, and which is marked "U. S. Exhibit No. 134," and on which appears, for instance, the steamer "Thor," 7112 tons New Wellington Coal, and down at the bottom it says "Actual weight of this cargo 7332"; what, for instance, is the first figure here of 7112 Wellington Coal; what does that correspond to?

A. That corresponds to the estimated weight of the cargo after the deduction had been made.

Q. What does the figure, actual weight of this

(Testimony of Thomas R. Stockett.) cargo, 7332 tons, refer to?

- A. That was our estimated weight of the contents of the boat—of the cargo.
- Q. I notice the expression "actual weight" is used there; does that or does it not indicate a weight arrived at by actual weighing? [1300—1238]
 - A. No, sir.
- Q. Now, I notice, Mr. Stockett, that in 1906, the first cargo shipped exclusively from the No. 1 Mine, namely, the "Titania," on July 6th, 1906, no deduction was made. And the same is true of the second cargo, the "Torje Viken" on August 5th, that no deduction was made; that is the second cargo loaded exclusively at the No. 1 Mine; but I notice that after that a deduction is made on some at any rate of the cargoes that were loaded exclusively at Nanaimo, and where the weight was obtained by an actual weighing; will you explain why or how it happened that a deduction was made not only in the case of the Northfield cargoes, but in the case of some at any rate of the cargoes from the No. 1 Mine where the cargo was actually weighed as it went on board?
- A. There was no reason to make a deduction from the cargoes that were loaded exclusively at No. 1 Mine, and at first there was not any; afterwards it seemed to have dropped into the regular course of events and the men who made the bill of lading and invoices out at the general office perhaps overlooked the fact that the vessel was loaded exclusively at the No. 1 Mine. That is the only explanation I can give as to why some of those cargoes have a deduction

(Testimony of Thomas R. Stockett.) made from them.

I first learned that a deduction was made on these cargoes which were loaded exclusively at the No. 1 Mine when I came to make up my statement about the middle of the summer of 1913. I was making up that statement for this case.

Q. I notice that in 1912 on your list you have changed the Northfield estimated weight and loading weight of the cargo of the "Wellington" on February 3, from 2532 to 2350; will you state why you made [1301—1239] that change?

A. Just let me see that.

Q. I want to call your attention to those two red ink ones.

A. In making up the estimates weight for the ship's bill of lading, to get the ship out when it was finished, it was made on the basis of 2507 tons; soon after the vessel went out a mistake was discovered; 157 tons of lump coal had been furnished the ship's own fuel bunkers, for the ship's own use, and in making up the papers hurriedly at the office, the 157 tons were added to the 2350 tons of estimated cargo, and that was the reason for the bill of lading and invoice going out on the 2507 tons basis. As soon as that was discovered at the head office, or the Nanaimo office, where all the accounts are rechecked, the correction was sent down by mail. The original papers got out on the boat, but the correction was sent down by mail.

Q. Sent where?

A. Sent to the general office at San Francisco.

- Q. The general office of the company at San Francisco?
 - A. The general office of the coal company, yes, sir.
- Q. Referring to the cargo of the "Wellington," on June 11, 1912, I notice a change there; will you explain to the jury the reason for that change?

A. A mistake was made in the compiling of the estimated weight. There is always more or less hurry when the ship is finishing, to get her off, depending on the tide or the state of the weather, or whether it is night or day, and a mistake was made in computing the figures for the estimated weight and it was sent out as 2415 tons. At the general office the mistake was discovered and a correction made in that case, and it was stated right on the invoice that followed by mail, that the actual weight was 2359 tons instead of the bill weight of 2415 tons. [1302—1240]

I am familiar with the method followed at the No. 1 Mine for getting the weights of coal. They are taken on a Standard Fairbanks Scale, the platform of which is about 11 feet 3, by 7 feet 9, and is large enough to hold our small coal cars nicely. The scale had a beam capacity of 65 gross tons. The main beam was graduated to tons and half-tons. There was a movable poise that had the graduations for the hundred weights from 100 to 1000. The carriage would be set at the half-tons, or the tons and half-tons, just below the weight of the car—the contents. The poise or the little carriage on this beam would be moved by a hand-ratchet until the scale took the

balance; the hundred weight that was indicated by this little hand-ratchet was added to the tons or to the tons and the half-tons; in other words, it might be 6 tons and 500 weight, or 6 tons and 1500 weight; if the lower poise indicated five hundred weight, then if the carriage stood at the six tons, it would be six tons and five hundred weight; or, if it was six tons and one-half on the main beam, then it would be six tons and fifteen hundred weight that would be taken as the weight. It took from 21 to 23 seconds to weigh a car. The beam when the weight was taken would be between the center and the bottom. I would describe that method of weighing as on a falling beam. I have observed the weighing there many times and have weighed there often myself. I have made experiments to determine the difference on those scales between weighing with the beam just above the lower end of the catch, so to speak, and a rising beam just below the upper end. I made such an experiment in September, 1913. After I had learned that there was a difference in the methods of weighing coal.

Q. Just describe the experiment and what you found.

A. I had a usual size train of 20 cars brought down from the mine and had them weighed in three different methods. Our usual method and a center-beam and a rising beam. On the same [1303—1241] cars, the same coal, all weighed under the same conditions, all weighed during the same afternoon and at the same time; the result of that was, as

(Testimony of Thomas R. Stockett.) indicated on the statement I have here of the difference between a rising and a falling beam, of a trifle over one per cent; in other words, a difference of 123 tons to a car.

Q. 123 tons?

A. No, I mean 123 lbs. to a car; the cars averaged in the neighborhood of 12,000 lbs. The difference between the center and the falling beam was 67 lbs. to the car, or 0.56 per cent; between the center and the rising-beam there was a difference of 56 lbs. per car, or 0.47 per cent; making the difference between the rising and the falling beam 123 lbs. per car, or 1.03 per cent.

It is not possible to weigh on those scales to within 5 or 10 pounds of the exact weight because the lowest graduations are 14 pounds. In a general way in the process of weighing we would take to the nearest hundred-weight. The cars are tared two or three times a year, and, occasionally, four times, depending on the change of the seasons. We find a difference between the wet and the dry weather of an average of about two hundred-weight to the car, due to absorption of moisture or drying out in the summer.

The object at Nanaimo and at Northfield is to load steamers to capacity. That was invariably done, unless we were caught without some coal on a Saturday night or a holiday, when rather than keep the steamer over for a day or two, we would dispatch it with a cargo a little short. There is a difference between the seasons of the year in respect to the loading capacity. The ships have a summer draught

and a winter draught. In the [1304—1242] mertime they load deeper in the water. We begin to load light for the winter sometime in the latter part of September, at about the time of the equinoctial storms. They begin to load heavy again for the summer in the latter part of March or the first of April. The way in which the draught of the vessel is taken is this: the wharfinger, or the man in charge of loading, gets into a little row-boat and takes the draught at the bow and at the stern of the boat by observation, all the ships having the even feet marks showing very plainly and the fractions of a foot. The men do not, however, always use a small boat. I discovered men several times standing at the wharf and just looking down at the bow and the stern, taking the draught of the vessel in that manner. were cautioned not to do that any more, because their observations would not be as accurate in that way as from the small boat. You cannot take the draught so accurately when the water is rough as when it is smooth. The Northfield wharf is located on Departure Bay which is a harbor of about a mile and a half or two miles in diameter and surrounded by bluffs. There is nearly always more or less commotion on the water, due to winds from the north The wharf at Northfield is on the and northeast. south shore and the prevailing winds in the summertime are northwest, north and northeast. In getting the draught we have to allow for the load in the vessel other than the cargo; for instance, the ship's bunkers and stores, fresh and salt water in the bal-

last tanks, machinery, etc. The way in which such an allowance is arrived at is this: the ship's bunkers are usually observed with the Chief Engineer by our wharfinger; they, together, arrive at an estimated quantity of coal in the bunkers. We have to take the ship's report for the amount of her stores and her fresh water, etc. [1305—1243]

- Q. Now, just to be certain that this is clear, Mr. Stockett, will you repeat how you get at the draught of the vessel, or I mean, how you get at the estimated cargo, with these allowances—that is, the bearing that these allowances that you are required to make upon your method of getting at the estimated weight?
- A. Well, they have their influence upon our estimated weight; they may have the effect either one way or the other.
- Q. Let me get at this way: when you take the draught of the vessel and compare the draught with the vessel's scale, what do you get?
- A. We get so many tons according to the ship's scale; if we have a certain draught, that multiplied by the ship's scale, whatever it may be, gives you the contents of the boat.
- Q. And if the boat has any cargo, or rather, any coal in the hold, or any fuel in the bunkers, or anything of that sort, that has to be deducted from the weight given by the scales?
- A. That has to be deducted from the estimated dead weight of the cargo.
- Q. Did you ever have any difficulty in getting at an accurate estimate; for instance; do you have any

(Testimony of Thomas R. Stockett.) trouble with the water ballast at all?

- A. Yes, sir; quite frequently.
- Q. What is it?
- A. We have no control over the handling of the ship—and the ship's officers quite frequently have a practice of manipulating the ballast in the tanks for keeping the ship in pose as we are putting the coal in; they will tell us at times that the tanks are empty or the tanks have so much in; I have seen myself,—I have seen them pumping water into the tanks or pumping water out of the tanks without saying anything to us about it; that has its influence upon the contents of the cargo.
- Q. What is the office of those tanks, what functions do they have? [1306—1244]

A. To keep the ship in poise; more particularly when there is no cargo in, when they are coming back empty; or at sea empty. If the cargoes are not loaded evenly, they are used to balance the ship.

The United States Geological Survey has made an examination of the mines at Nanaimo. They examined the working faces and took samples of the coal. The letter and the reports now shown me are those which were prepared by the Government in this connection.

(At this point said papers and reports were marked Defendants' Exhibit "FF" for identification, counsel for the Government objecting to their introduction in evidence upon the ground that no sufficient foundation had been laid in this, namely, that it was not shown that said letters and reports had been

brought to the attention of the defendants, or any of them, and that, therefore, they were not admissible as they might otherwise be for the purpose of showing that the defendants relied upon these reports as accounting for differences between the invoice or bill of lading weight and the out-turn or custom-house weight on coal shipped from Nanaimo to San Francisco, so that the mere existence of a shortage would not be *ipso facto* evidence of a fraudulent or guilty intent on the part of the defendants.)

I have made observations and know of my own knowledge the humidity of the mine. The humidity percentage of moisture of the air in the mine usually runs from 80 to 95%. I have had experience of an overage at the mine. During the year 1908 when the demand for coal was very slack, we were storing considerable coal in Nanaimo, both in the bunkers and in piles. This coal was accumulated during the summer months, June, July, August and [1307-1245] September. In the fall when business became brisk, the coal was gradually sold off, and, by the end of the year, the accumulation had been disposed of. There was one pile particularly of 3,500 or 4,000 tons. The pile was out in the open near the wharf. By the end of the year that coal had been disposed of, and in checking up results, we found quite a little overage in the contents of the pile. It was something over 200 tons. As to the moisture to which that coal had been exposed, I would say that our wet season begins usually at the equinoctial period and continues right on through until spring, and that this coal from Sep-

tember on had been subject to the influence of the weather. We found some cases of shortage during that same year. We had the bunkers loaded high in order to keep the mine running steady; we had accumulated quite a content of coal in the bunkers, and that coal being the easiest to reload into the cars, was taken out first and put on the ships as they came up. When that coal was checked out there was a shortage. As to the moisture conditions or drying out conditions to which that coal had been subjected, I would say that it was out in the open, not exposed to quite the same extent as the other piles, but still, in so far as all the bunkers were open on top, subject to the influence of the weather so far as the top of the pile was concerned. That coal was disposed of in the early part of the season, however, and was subjected to practically no rain.

Cross-examination by Mr. SULLIVAN.

I am, as trustee for my minor son, a stockholder in the Western Fuel Company to the extent of, I think, 26 shares. I am the representative and manager of the Western Fuel Company at Nanaimo and Northfield, and have represented the company there since July, 1904. My salary is now \$1,000 per month and has been for about two years. [1308—1246]

Of the two mines, No. 1 and Northfield, No. 1 is the larger. In 1912, 49,623 tons were shipped from No. 1 Mine; and from Northfield an estimated quantity of 65,665 tons, or a difference of 16,000 tons more from Northfield than from No. 1. In 1911, according to my table, there was shipped from No. 1 Mine, 73,578

tons, and from the Northfield Mine, 81,832 tons, a difference of about 8,000 tons. In 1910 No. 1 shipped 56,930 tons and Northfield, 55,292 tons. In 1906, Nanaimo shipped 92,603 tons, and Northfield 27,288 tons. During the entire period from April, 1906, to December, 1912, No. 1 Mine shipped 422,522 tons and Northfield an estimated amount of 410,748 tons, a total shipment of 833,270 tons, so that during the entire period there was an excess of shipment from the Nanaimo Mine, Mine No. 1, of about 12,000 tons over the amount shipped from the Northfield Mine. All of the coal shipped from Northfield and mentioned in my statement was consigned to San Francisco.

March 16, 1906, was the date of the first cargo loaded at Northfield on estimated weights. Prior to that time we took actual weights on the scales. After we began to use the estimated weights we had a systen of comparing the draught of the boat with the estimated quantity of coal we had in the bunker or the estimated quantity that the mine produced. The boats were loaded directly from the bunker and from the mine. I should say that it would be about half and half. At the Northfield Mine the bunkers are frame structures. The lump coal is in one continuous bunker, without pockets; the bunkers are not graduated in any way at all, so as to enable us to make an estimate of the amount of coal in the bunkers at stated times. We can, however, compare the estimate of the weight based on the draught of the vessel with the estimated weight of coal in the

bunkers. From the mine production we figure on a percentage of lump coal being produced [1309— 1247] in the mine, and that is used as a basis to work on. It is not accurate, because the percentage of lump coal brought out of the mine varies from day to day. We keep a daily record showing the quantity of coal estimated to be in the bunkers, and then, as I have said, compare that estimate with the estimate of the coal based upon the draught of the vessel. That was a matter of daily process and experience whenever a vessel was being loaded. The displacement scale of the ship to which I referred in my direct examination is shown on a blue-print in the ship's cabin. It is made by the builders of the ship. It is a table, not a scale, that you can weigh coal on. The blueprint may be 6 to 10 inches wide and 2 to 10 feet long, and there is a graduated scale worked off on there by the builders of the ship showing the weight of the estimated contents of the vessel according to the draught. During the year 1906, when we first commenced taking our weights by estimate, we compared the estimate of the coal in the bunkers with the estimate of the coal that went into the vessel, based upon the draught of the vessel, but we did not go into the detail of the latter until the vessel was about loaded. We regularly made a table showing the comparison between the estimate of the coal in the bunkers and the estimate of the coal in the vessel, when loaded according to the draft of the vessel. I have not brought those tables with me from Nanaimo. In answer to the question how those estimates com-

pare, I would say that they fluctuate. There would be differences sometimes one way and sometimes the other way, but there would be no great difference in the course of a year. Whether the difference was merely nominal, I would not say without looking at the statement.

The Western Fuel Company has weighed some of its coal from the Northfield Mine when the shipments were made to parties other [1310—1248] than to itself. That has been the invariable practice in such cases. We have not, however, weighed any coal at all at the Northfield Mine since March 16, 1906, that was shipped to the Western Fuel Company. We weighed the coal that was sold to ships for fuel purposes at the Northfield Mine. I think that was done regularly. I cannot recall any case where it has not been done. The weights of this fuel coal were taken on the hopper scales which have been in use at various times since 1906.

Q. Now, have you at any time deliberately estimated the amount of coal that went into any ship—in other words, have you made a record of the amount of coal going into a ship which is higher than the ordinary estimate, or the actual weight?

A. I cannot say that I understand you.

(Question repeated.)

A. No.

Q. Have you, at any time, made a record of the weight of coal that went into the bunkers of a ship for fuel purpose in excess of the actual weight of the

(Testimony of Thomas R. Stockett.) coal that went into the bunker?

- A. If the coal was weighed, we took the actual weight; if there was a case where it was estimated, we would get at it as best we could. I don't recall right now any cases where it was estimated.
- Q. No, as I understand you to-day, all of the bunker coal was weighed. A. That was the instructions.
- Q. And you carried out the instructions continually, didn't you?
 - A. So far as I am aware of now.
- Q. You don't remember of a single instance where you loaded coal into the bunkers of a ship where the coal was not actually weighed upon the scales?
- A. There might have been a case or two of that kind, but I can't recall any at the present time.

 [1311—1249]
 - Q. You can't recall at the present moment?

A. No.

Q. Can you recall any instance where you loaded bunker coal upon a ship at the Northfield mine, where you entered in your records a weight in excess of the actual weight of the coal?

A. No, I don't recall any.

I was in the habit of following instructions received by me from the home office in San Francisco. These instructions might be sent to me by Mr. Howard, or by the Secretary, or by the Manager, Mr. J. B. Smith.

(A letter was here shown to the witness, addressed to him, and dated May 9, —6, purporting to be a copy

of a letter signed, "Yours truly, ———, Vice-president.") According to my best recollection, that letter was signed by Mr. James B. Smith. I received a letter to the same effect as that shown by this copy; whether this is an exact copy, I do not say.

(The admission of said letter being objected to by counsel for the defendants, it was marked by the Clerk as "U. S. Exhibit No. 161" for identification.)

In making our estimates of the weights of coal shipped at Northfield, we, as I have before testified, based our calculations on the draught of the vessel. We took the draughts of the vessels upon their arrival and then commenced putting coal into the vessel, and, after we completed the cargo, we ascertained the draught again in inches or in feet. It was altogether dependent upon the ship how much coal we allowed to the draught. Each ship has a scale of its own, stated on the blue-print heretofore mentioned by me. [1312—1250] The scale on the blue-print sets forth not the quantity of coal to the inch represented by the draught, but gives the dead weight per inch or foot of draught. By that I mean a certain weight would sink the vessel that much lower into the water. The deeper she got in the water, the more it will take, the more resistance on the side of the ship.

Q. I show you what purports to be a loading-scale of the steamship "Thor" in 1907, and ask you if that is a specimen.

A. That is the style of the scales that the ships have. This is on white paper, some of them are on blue paper, but it is the same general form.

Q. That purports to show the quantity of deadweight cargo a ship will carry under certain draught.

A. Under certain draught, yes, sir.

Mr. SULLIVAN.—We offer this in evidence.

Mr. OLNEY.—Well, now, does it show that? You asked him to testify to the contents of the paper, didn't you?

Mr. SULLIVAN.—Q. State what that is.

Mr. OLNEY.—Just read the heading at the Table of Weights.

A. Loading-scale 1907, steamer "Thor." On one side is the freeboard, which is given in feet and inches, indicating the amount of ship above the water at certain depths. In the center is the draught, starting from 6 feet 11 inches up to 24 or 25 feet. On the other side is the tons of dead-weight cargo, fuel and stores, with the nearest hundred tons to each inch—the nearest 100 tons is shown, and there is a line drawn to show where on the scale that comes, whether it is a fraction of an inch, or not; wherever it meets the scale that is the draught for that number of tons of dead-weight. It is made in even hundreds, from 100 tons up to 8,100 tons. [1313—1251]

Mr. SULLIVAN.—Q. According to that table there, what quantity of coal would be represented by the extra draught of an inch?

A. That would vary on whether the ship was light loaded or heavy loaded. The scale does not run even. The deeper the ship gets down the less the space is.

Q. An allowance is made for that variation in that table, is it not?

- A. Presumably, according to the builder's calculations.
- Q. An allowance is made for that variation in the scale-table on all the ships; is not that so?
- A. Presumably it is. It is the builder's scale, not the scale as the result of actual practice; it is the builder's estimated scale.

Mr. SULLIVAN.—We offer it in evidence.

(The document was here marked "U. S. Exhibit 162.")

Mr. OLNEY.—Mr. Sullivan, may I ask the witness a question in this particular now so that you can cross-examine in regard to it, if you want to do so, and so that I will not have to go back to it again?

Mr. SULLIVAN.—Yes.

Mr. OLNEY.—Q. Are the inches of draught marked on the outside of the vessel?

A. No, sir; just the feet marks; every foot is marked, not the inches.

Mr. SULLIVAN.—Q. But your representative there makes a division into inches and fractions of inches? A. By sight, by observation.

- Q. Does he not make a division with a rule or a measure?
- A. No, sir; he does not; he makes it by observation.
- Q. Is not the scale on the ship oftentimes divided into inches also?
- A. Not to my knowledge it is not; I have not seen any that way.
 - Q. Take the steamship "Thor," what was your cus-

tom when loading that vessel with cargo in determining the quantity of coal that [1314—1252] went aboard the vessel based upon the draught?

A. The draught of the steamer was taken when she came in; when she was loaded the draught was taken again; that gave us the dead-weight of the cargo; from that total dead-weight, in the event of our having put any coal in at the Nanaimo mine which was actually weighed, that was deducted. The ship's bunkers were deducted. The ship's stores were deducted; the ship's fresh water and the amount of estimated tank-ballast would be deducted, and from this total dead-weight, taken by the draught, the estimated amount of coal put in at the Northfield mine was arrived at.

Q. And you would enter your estimate in the books of the company at Northfield, would you?

A. Yes, sir.

Q. In making out your bill of lading, what figure would you adopt in making out the Consular invoice?

A. Prior to March 16, 1906, the bill of lading and the invoice weights agreed with the weights at the mine because prior to that time they were actually weighed cargoes. Beginning with March 16th, 1906, the bill of lading and the invoice was made on the basis of 100 tons less than the estimated weight of large ships and 50 tons less than the estimated weight for small ships. That practice continued until November, 1907, at which time we ceased making a difference—

Q. (Intg.) That is, making an arbitrary differ-

(Testimony of Thomas R. Stockett.) ence of that kind.

- A. We ceased making the arbitrary difference; the bill of lading and the invoice weights agreed with the estimated weights up until November, 1907—that was the time when we stopped making an arbitrary reduction of 150 tons, November 12, 1907,—and that continued on until September, 1908; then we started the arbitrary deduction of 3 per cent. [1315—1253]
- Q. That is, you deducted from the estimated weight of an entire cargo, 3 per cent, for the purpose of fixing the bill of lading weight?
- A. Fixing the bill of lading and invoice weight; that continued until July, 1909, when we began the one per cent arbitrary difference, and that has continued since.
 - Q. That was in July, 1909. A. July, 1909.
- Q. And ever since that date, in loading the vessel with coal, sent to the Western Fuel Company, you made an estimate of the entire cargo weight, and for the purpose of making out your invoice or bill of lading you deducted one per cent of the estimated weight and had that inserted in the bill of lading or invoice; is that so?
- A. You have got so many questions put together there, that I cannot follow it.
- Q. I say that ever since 1909, in accordance with your practice at Northfield, you made an estimate of the weight of the coal, and since that date in making out your bills of lading or invoices you deducted one per cent from the estimated weight and had that inserted in the bill of lading or invoice; is that a fact?

A. Since July, 1909, there has been a difference of one per cent between the estimated weight and the bill of lading weight.

Q. That is, if you estimated a cargo to weigh 5,000 tons you would deduct 50 tons from that, would you?

A. Yes, sir.

Q. And insert 4,950 tons as the true weight of the coal in the bill of lading or the invoice; is that so?

A. Yes, sir.

Q. And prior to that I understand that for quite a while it had been your practice to deduct 3 per cent—you have already testified to that. Under what circumstances do you say you made a change in the method of fixing the invoice or bill of lading weight—that is, reducing the estimate one per cent instead of 3 per cent? [1316—1254]

A. I received instructions from the general office at San Francisco to discontinue making the 3 per cent deduction and to make one per cent deduction.

Q. Where is that letter of instructions?

A. Filed in the Court.

Q. Filed here, is it?

A. It was offered in evidence this morning.

Q. Do you remember the circumstances under which you ceased making any deduction at all and had your bill of lading just tally exactly with the estimated weight?

A. You mean when you first started it.

Q. Yes.

A. There is a letter that has been filed here somewheres; we received instructions from Mr. Norcross,

the Secretary, to discontinue the practice as the weights were turning out very closely to our estimates. That was in November, I think, 1907, if I recall correctly now.

Q. I show you what purports to be a copy of a letter, and ask you if this is a copy of the original letter sent to you at that time.

Mr. ROCHE.—That letter is already in evidence; it was identified by Mr. Norcross.

A. Yes, sir; I received a letter of that kind.

Q. That is a carbon copy of the original letter which you have in your possession now, is it not?

A. Yes, sir.

Mr. SULLIVAN.—Of course, this letter is already in evidence,—it is very short and I will read it to the jury again:

"November 12, 1907.

Western Fuel Company,

Nanaimo, B. C.

Dear Sirs: In the past you have been making our Bills [1317—1255] of lading on aggregate shipments to us less than the actual quantity shipped; I do not know of any reason for your further continuing this and from now on please make bills of lading on actual quantities shipped.

Yours truly," blank "Secretary."

- Q. That was signed by Mr. Norcross, was it?
- A. Yes, sir.
- Q. During that period of time, and for a quite a while after that, or at least for quite a while prior to this date, you say there was really no necessity for

(Testimony of Thomas R. Stockett.)
making any distinction between the estimated weight
and the bill of lading weight; is that a fact?

Mr. McCUTCHEN.—The witness did not say that; he didn't say anything like that, Mr. Sullivan.

Mr. SULLIVAN.—Q. Did you have any correspondence with Mr. Norcross with relation to the difference between the bill of lading weight and the estimated weight, prior to the receipt of this letter?

- A. No, sir, not that I recall.
- Q. Did you, after the receipt of this letter, receive any communication from Mr. Norcross or the Western Fuel Company explaining why there was no reason for further continuing the practice of having the estimated weight and the bill of lading weight tally? A. No, sir.
- Q. Do you know if at that time the bill of lading weight and the estimated weight practically agreed, about that time?

A. Well, I would judge that that was the reason for it.

Q. And how long do you say after the receipt of this letter did you continue to make the bill of lading weight and the estimated weight agree?

A. Until September, 1908.

Q. Until September, 1908, a little less than a year.

A. Yes, sir.

[1318—1256]

Mr. SULLIVAN.—Q. What happened during that period of time to bring about a change?

- A. I can't tell you exactly how it came about, but I recall that Mr. Howard was up there in August of that year.
 - Q. That is, in August of 1908.
- A. Yes, sir, and it must have grown out of a talk with him that we were evidently careless in the estimating of our weights because there was a growing difference in San Francisco, and his instructions were to be particularly careful. In September, when we started to load a cargo, I gave the order about making the deduction 3 per cent. I wanted to be on the safe side; I didn't want any more than we were entitled to, but I wanted to stop any dispute as between the different departments of the company. That was the reason for starting it.
- Q. Up to the time you had this talk with Mr. Howard in 1908, you had never made a deduction greater than one per cent excepting when you started in originally to make an arbitrary deduction of 100 tons on big ships and 50 tons on the smaller ships?
- A. We didn't make any one per cent deduction until long after this period, a year after this period.
- Q. Had you ever made any one per cent deductions at all prior to this period in 1908?
- A. It might have worked out sometimes to be one per cent, but that was not the rule.
- Q. Was not the deduction which you had practiced prior to 1907, 100 tons for large ships and 50 tons for smaller ships, practically a one per cent deduction?
 - A. It was not based on a percentage at all; it was

(Testimony of Thomas R. Stockett.) just an arbitrary figure of 50 tons for small sized ships or small cargo and 100 tons for large ships or large cargoes. [1319—1257]

Q. Take the case of the "Thor," what was the average cargo of the "Thor"?

A. The "Thor" would run from 7,000 to 7,200 or 7,300 perhaps in the summer.

Q. In the case of the "Thor" you made an arbitrary deduction of 100 tons, as I understand you.

A. Yes, sir.

Q. And in the case of the smaller vessels you madea deduction of only 50 tons.A. 50 tons.

Q. At any time a deduction was made of 100 tons for large ships and 50 tons for the smaller ships, do you know if you made a deduction of more than 1½ per cent in fact on the entire cargo?

A. I couldn't tell what the percentage was until I knew the size of the cargo.

Q. From your knowledge of the ships you dealt with and the amount of cargo generally taken on the ships, will you say that the amount of deduction at any time ever exceeded more than 1½ per cent on the entire cargo?

A. Yes, sir, I will say that it did exceed $1\frac{1}{2}$ per cent of some of the cargo.

Q. Did it exceed 2 per cent?

A. I think not; some of the cargoes were 5,200 or 5,100 tons.

Q. Why did you in 1908, after this talk with Mr. Howard, conclude to make an arbitrary deduction of 3 per cent, greater than any deduction theretofore

made, 3 per cent of the estimated tonnage, for the purpose of fixing the bill of lading tonnage?

A. Because I realized that estimating the boats there was a liability of errors creeping in; that the tendency of men is to over-estimate, and I did not want from my department anything more than I was entitled to, and I was perfectly willing to make it 3 per cent if it required 3 per cent to make it work out right.

[1320—1258]

- Q. In 1907, at the time you received the instructions from Mr. Norcross, the company thought it was dealing fairly with itself by accepting as the bill of lading weights the estimated weight.
 - A. Yes, sir.
- Q. It was found by experience that it was dealing fairly with itself, did it not? A. At that time.
- Q. At that time, in making an estimate of the weight of coal you took into consideration the draught of the vessel, the amount of other cargo upon the vessel, the tank weight of the vessel, the weight of the stores and all these other elements which you say you took into consideration in making the estimated weight; is not that the fact?
- A. The very same considerations were taken in at that time, the same elements.
- Q. The very same elements were taken into consideration when you concluded to make the bill of lading weight correspond with the estimated weight as when you made a deduction of 100 tons and 50

tons, and when you made a deduction of $1\frac{1}{2}$ per cent or 2 per cent, the same conditions existed, did they not? A. The same conditions existed.

- Q. After consulting Mr. Howard, why is it you fixed the deduction at 3 per cent of the estimated weight?
- A. Because, as I understood it, the cargoes were coming out quite considerably below our estimates, and as I said before, I wanted to be on the safe side.
- Q. You had been on the safe side when you made a deduction of only 2 per cent for a number of years. Why didn't you adopt a deduction of 2 per cent instead of 3 per cent?
- A. When it originally started it was just an arbitrary instruction of mine to start with 50 tons or with 100 tons, according to the size of the cargo. [1321—1259]
- Q. But in all those cases the deduction was less than 2 per cent—it was less than 2 per cent, was it not; and you found that to be too much, did you not?
- A. In the course of time we did; we found we were estimating nearer to the actual contents.
- Q. If you found 2 per cent to be too much, what reason can you give for raising it to 3 per cent after this talk with Mr. Howard in 1908?
- A. Because we were over-estimating the actual out-turn as I understood it from down here.
- Q. And at that time there was no deduction whatever from the estimated weight? A. No, sir.
- Q. How long did that 3 per cent deduction continue in force?

A. About a year; less than a year; it continued on until July, 1909.

Nanaimo is a very wet country in the winter season, and that is true practically of all the surrounding country about Nanaimo and Northfield. The winter season lasts from four to six months, and we have rain practically all of that time. The downpour, as I remember it, runs from 38 to 46 inches per annum. It was during the summer of 1908 that the pile of coal to which I have referred was exposed to the elements. We began accumulating the piles, I should say, in June and continued with the accumulation right along until the fall season. The accumulation was at Nanaimo, one pile in the bunkers and one in the wharf-yard. In the yard the pile was from 3,500 to 4,000 tons, and it was exposed from September, when the rains began, until the end of the year, in December, when the coal was finally disposed of. The coal increased in weight by reason of the falling rain a little over [1322—1260] 200 tons. It was weighed before being put in the pile, and it was weighed out after it was sold. sale was for any trade that came along at the time. A record was kept on our books showing the exact quantity of coal piled in the yard and the exact quantity sold out of the pile at different times. I don't think that I sent that record to the office in San Francisco, or any record or letter referring to that particular pile. Whether the record is now in existence, I don't know. The wharfinger may have a record in some of his books. The coal was weighed

upon what I understand now is a falling beam, from the center down. I knew at the time the coal would be re-weighed when it was taken from the storage pile. I weighed the coal upon a falling beam, because that was our custom. In the ordinary course of my work I had to pass the weigh-house daily, and I invariably stopped there to talk with the weighmen, and the probabilities are I saw quite a little of that coal weighed. It was weighed upon a railroad platform track-scale at the Nanaimo Mine. All of our coal that goes on similar scales is weighed upon the falling beam, whether it goes to the local trade or to other trade. In answer to the question whether I know that the local dealers sell upon an even beam, I would say I never heard of any difference regarding the position of the beam until this summer and in connection with this case, when I was informed that the Government had a rule regarding the weighing of base commodity upon a rising beam; I then asked what that meant and, for the first time, found out that there were different systems in the weighing of coal. In answer to the question whether or not I know that the weight of coal sold upon a falling beam is not a correct weight, I would say I do not know that. I think it is an honest weight and it has been in vogue there ever since I have been there. In answer to the question whether the coal weighed upon the bunkers and sold to the ships [1323—1261] for their bunkers is handled upon a rising beam, an even beam or a falling beam, I would say that all of our coal is sold on what I call a falling

(Testimony of Thomas R. Stockett.)

beam, as I understand the distinction now. I have found by the series of experiments I have carried on that the difference in weight between the results of a falling beam and a rising beam is about one per cent; the difference between the weight taken on an even beam and the weight taken on a falling beam would be about one-half of one per cent.

- Q. The absolute fair way of taking a weight is upon an even beam, is it not?
- A. I don't know why you call it the fair way; we think our way up there is fair because it has been the custom of that mine and the custom of the company prior to my going there.
- Q. Now, Mr. Stockett, the actual weight of any commodity is that taken upon an even beam, is it not?
 - A. That would be the actual weight, yes, sir.
- Q. Now, as I understand it, you take the weight upon a falling beam and charge the ship-owner for the weight so taken, do you not? A. Yes, sir.
- Q. And the weight so taken is a weight equal to one-half of one per cent, between the actual weight, the weight taken upon an even beam and that which is taken upon a falling beam.
- A. There is a difference of one-half of one per cent.
- Q. Now, as a matter of fact, the man who pays for 5,000 tons of coal say, or a man who buys 1,000 tons of coal for fuel purposes upon his vessel is charged by you up there for more than 1,000 tons, according

(Testimony of Thomas R. Stockett.) to the actual weight, is he not?

- A. If he gets 1,000 tons he is charged for 1,000 tons. $\lceil 1324 1262 \rceil$
- Q. But that 1,000 tons he is charged for is 1,000 tons figuring upon a falling beam, is it not?
 - A. Yes, sir.
- Q. And the actual weight of that coal is really onehalf of one per cent less, is it not?
 - A. Not according to our method and our system.
 - Q. According to your system, is not that so?
 - A. According to our system it is 1,000 tons.

We have what we call warm weather in the summer in Nanaimo and Northfield. I have seen the temperature as high as 86 to 88 in July or August. I am not positive as to what the average temperature would be in the summer-time. I do not know how the summer temperature would compare with that of San Francisco. We commenced to form the pile of coal that I have spoken of as exposed to the summer elements in the months from June to September, and it was sold out through the balance of that year. A pile of coal was put into the bunkers at the same time; they were filled first. The bunkers were open on top. Less coal was taken out of the bunkers in weight than was weighed in. Somewhere in the neighborhood of 7,000 to 7,500 tons were placed in the bunkers and the last portion was taken out by the early part of September, before the rains started up. That was the easiest coal to put in our cars and we naturally loaded it out first. We don't (Testimony of Thomas R. Stockett.)

have any fogs up there such as you have here in San Francisco. A notation was kept in the office of the diminution of coal in the bunkers. I do not communicate the fact of such diminution to the office here in San Francisco. The record is probably still extant at Nanaimo. I do not recall the per cent of diminution or the amount in tons. If that coal had been completely [1325—1263] covered up in the bunkers, instead of being exposed on the top or surface, the diminution would probably have been the same at that time of the year. The bunkers are located just back of the water at Nanaimo, but they are on the land. The front end of the bunkers is right at the water's edge. The humidity of the atmosphere in the mines runs from 80 to 95%. We conducted a series of experiments on that point in 1909 and 1910. The test was made by the superintendent of the mine, and a record of it was kept. The voyage from Nanaimo to San Francisco would average, I think, about four days. I have nothing to do with Ladysmith and would not have any reason for communicating with Mr. Norcross or the Western Fuel Company concerning the methods of weighing or making estimates of weights there, and I have not done so at any time that I can recall.

[Testimony of Edward Park, for Defendants.] EDWARD PARK, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. KNIGHT.

I am, by occupation, a tallyman and checker, and

am now, and have been for about 31 years, employed in that capacity with the Pacific Mail Steamship Company. I have been tallying and checking coal which goes into the vessels of said steamship company at this port. My duties have been to see that the tubs of coal that go up are average tubs, kept even, and to see that the coal would not go overboard and that it was weighed by the Government weigher. I keep a record of the quantity of coal delivered.

Q. Will you state what you yourself have observed with respect to the manner in which the buckets have been loaded, both those [1326—1264] which have been weighed and those which have not been weighed?

A. Well, sir, the coal that is weighed and the coal that is not weighed is about an even thing, the tubs are kept as near correct, an average tub as possible.

Q. Would you say that that was the fact extending over the time that you have been checking for the company coal which the Western Fuel Company have been supplying to the Pacific Mail Steamship Company? A. Yes, sir.

We have had three hatch-tenders on the barges that I recall; Rocca, Dan Pallas and Frank Wilson. A long time ago David G. Powers and Edward Powers were hatch-tenders for a short time. If the coal is very dry, the crew of the steamer, and also the trimmer, has it wetted down so as to keep the dust from flying. These steamers are coaled in rainy weather as well as in fair weather. The barges are nearly all open from stem to stern so that the coal

(Testimony of Edward Park.) is exposed to the weather.

- Q. What has been your experience with reference to the frequency with which weights are taken by the custom-house weigher? A. One in 15.
- Q. Are they taken in rounds of tubs or are they taken at random?
- A. Well, they are taken in different ways. Sometimes they will weigh one tub and then wait until 2 or 3 tubs go up and weigh another one; sometimes they will weigh two tubs at a time provided that the tubs are average tubs, even, not overloaded.
- Q. Will they sometimes weigh a round of tubs starting with No. 1, and then again starting with No. 2, and then again starting with tub No. 3, or again starting with No. 4, and then take a round?
- A. No, sir, they don't take them that way. [1327—1265]
 - Q. How do they take them?
- A. If the barge is stopped for a while; that is to say, if the bunker is blocked up, they will wait a while, they have to wait on the barge say 10 minutes or a quarter of an hour, and then if those four tubs are in the barge and they are not overloaded, if they are average tubs, the weigher may take three of them, he may weigh three together, but if they are overloaded, up they go, he don't weigh them.
- Q. What would you say with reference to the samples of tubs selected by the custom-house weigher for weighing; are they or are they not fair samples of the tubs that are hoisted into the bunkers of the steamers?

- A. They are, sir, and many times the tubs that are not weighed are heavier than those that are weighed.
- Q. I ask you, Mr. Park—possibly you didn't understand my question—whether or not when a custom-house weigher is weighing a round of tubs, instead of starting in with tub No. 1, for instance, he will start in with tub No. 2, or tub No. 3, or tub No. 4 and then weigh four tubs?
 - A. Sometimes they will start in with tub No. 4.
 - Q. And then weigh 3, 2 and 1?
- A. Not always; sometimes he will start with No. 3; sometimes they change them.
- Q. Have you ever seen coal being laden into the Pacific Mail Steamers that contained considerable moisture? A. Yes, sir, many times.
- Q. Due to what cause, so far as you yourself observed, how did it get wet?
- A. Well, we have had barges that have laid in the stream some of them two months, and they have been exposed to the elements and the rain and when we would get them the water would run out of every tub, they would be wet from the top of the coal to the bottom of the barge. [1328—1266]
- Q. Will you state whether or not in weighing this coal any allowance was made by the custom-house weighers on account of moisture in the coal?
 - A. None whatever.
- Q. What conversation, if any, have you ever had with Mr. Mills respecting the manner in which the

(Testimony of Edward Park.) tubs were to be weighed?

A. Well, Mr. Mills has told me a dozen times to have the tubs kept even, and that in case any coal went overboard, which sometimes it does owing to lumpy coal in the chutes blocking, that if any coal went overboard to allow so many tubs what I thought was correct, at the end of the day.

I have kept some of my tally books. These are the books used by me in the discharge of my duties. I would keep the books two or three years and then destroy them.

- Q. I show you here a book marked August 15th, 1911, to November 10, 1911, and I take the first page, in which there appears any tallying marks, and I ask you to explain to the jury how you tallied and made note of the tally of the tubs that were laden on the steamers with their weights. Just explain that book. You have here, for instance, at the top, "Well." I suppose that means "Wellington"? A. Yes.
- Q. Wellington coal, ex "Melrose," to steamer "Mongolia," August 15, 1911. You have the page ruled off and you have certain lines. Below certain check-marks appear a series of figures in a column. Will you state to the jury what that first column of figures means, to what tub does it refer?
 - A. To No. 1.
 - Q. To No. 1?

A. To tub No. 1, and we have seven weights. On tub No. 2 we have the same. On tub No. 3 we have seven. On tub No. 4 we have seven. That makes 28

(Testimony of Edward Park.) weights altogether. [1329—1267]

- Q. Seven weights on each tub?
- A. Seven weights on each tub.
- Q. And those figures are the tonnage?
- A. The gross weight.
- Q. In lbs. The gross weight in lbs.

Mr. SULLIVAN.—Q. What is the date of that?

- A. August 15, 1911, steamer "Mongolia."
- Q. And what barge?
- A. The barge "Melrose."

Mr. KNIGHT.—Q. After you get your weights—I presume you get them from the custom-house weigher—how were the net weights arrived at?

- A. When you get seven weights you divide the gross by 7 and then deduct the tare from that, which gives you the net weight.
 - Q. In that particular instance what was the figure?
- A. The net weight was 1524; that was the average of No. 1, the net of No. 1.
 - Q. That was the average net of No. 1?
 - A. Of No. 1.
- Q. And you did the same with reference to the other three buckets?
- A. The same with No. 2, with No. 3 and with No. 4.
- Q. And then the check-marks or tally-marks above the column of figures indicate what?
 - A. Those indicate the number of tubs.
 - Q. The number of tubs that went up?
 - A. The number of tubs, yes, sir.

Q. How often did you compare with the customhouse weigher your figures, either as to the weights or as to the number of tubs that were hoisted?

A. About every few minutes, about 5 or 10 minutes, or if he was not very close to me a signal would signify how many tubs he had, and so we compared it.

Q. Will you state whether or not you compared with the custom-house weigher at the close of the day the total tonnage that had been hoisted on the steamer?

A. Yes, sir, we make up our [1330—1268] books at 5 o'clock and we both agree as to the amount and everything is correct.

Q. During these times that you have testified to who if anyone represented the Western Fuel Company on the barges?

A. Sometimes Mr. Smith did.

Q. Mr. Edward Smith?

A. Mr. Edward Smith, but he was not there all the time, he might be called away to some of the other steamers, to the Japanese steamers, or the Australian steamers, or to tramp steamers.

Q. If Mr. Edward Smith was not there did the Western Fuel Company have anyone representing it for the purpose of ascertaining the weight of these tubs and the weight of coal that had gone into the steamer?

A. Not if I was there and the custom-house officer was there.

(The entry on the page of the tally-book herein-

above referred to was at this point offered in evidence, and it was explained that the offer was made for the purpose of showing the system pursued by the witness and the way in which the weights of the tubs ran, it being explained that, of course, the entry would show only how the tubs ran on that particular day and what would be the discrepancy in the weights of the tubs. It was conceded that the entries show only the weights of the tubs that were in fact weighed.)

"Mr. KNIGHT.—I merely want to show the jury how the weight of the tubs run, taking tub by tub. For instance, I will take tub No. 1, the weights ran 2300, 2280, 2220, 2220, 2230, 2200, 2010, No. 2 tub ran: 2100, 2120, 2180, 2150, 2120, 2140, 2190. No. 3 ran: 2120, 2100, 2270, 2170, 2190, 2100, 2164. No. 4 ran: 2020, 2040, 2230, 2210, 2180, 2100, 2160." [1331—1269]

- Q. I will ask you, Mr. Park, with reference to these other books, they are all kept alike, I presume?
 - A. Yes, sir, they are all about the same.
- Q. Take the book to which I now refer, dated May 23, 1911, to August 10, 1911, being a day on which Wellington coal was put in from the bark "Theobold" to the steamer "Korea," June 28, 1911, taking a similar series of entries, tub No. 1 ran: 1550, 1550, 1580, 1570, 1540, 1580; tub No. 2: 1590, 1500, 1600, 1630, 1650, 1560; tub No. 3 ran: 1720, 1660, 1700, 1700, 1750, 1670; tub No. 4 ran: 1620, 1620, 1680, 1670, 1630, 1660. There was a difference there of weight between some of those tubs of from 1500 to 1750 lbs.

-250 lbs. difference in two tubs; is that correct?

A. Yes, sir.

Q. Would you say that that difference would exist on account of the nature of the coal that was being hoisted? A. Yes, wing coal, light, lumpy.

(The portion of the tally-book last read was for the date June 28, 1911.)

Mr. SULLIVAN.—And do you say that the difference exists in the weights taken of one particular tub?

Mr. KNIGHT.—There is as much discrepancy in these tubs as 250 lbs.

Mr. SULLIVAN.—That is, a discrepancy in the weights taken in tub No. 1 for instance, or the difference between tub No. 1 and tub No. 2?

Mr. KNIGHT.—One tub, No. 2, weighed 1500, and a tub, No. 3, weighed 1750 lbs.

Mr. ROCHE.—250,000 lbs. more than the other tub? [1332—1270]

Mr. KNIGHT.—250 lbs. more than the other tub, yes.

Mr. McCUTCHEN.—You have got the same tub 1500 and 1660.

Mr. KNIGHT.—You have got 1500 and 1660 on the same tub, 1500 on tub 2, and on the same tub 1660; that is 160 pounds excess.

Q. That was due, Mr. Park, you say, to the character of the coal? A. Yes.

Q. The coal differs considerably in weight as to whether it was fine or coarse?

A. Certainly; if it is lump coal, it weighs light, but

(Testimony of Edward Park.) if it is fine coal it weighs heavy.

- Q. Do you recall about how many tubs there are to the ton in the barge "Nanaimo" and "Theobold"? About how much will 100 tubs go on either one of those two barges?
 - A. Well, that depends upon the coal.
 - Q. The average coal that you get?
- A. If it is Japanese coal, 100 tubs will go about 45 or 56 tons to the 100 tubs, but if it is Wellington coal, or Comax, the 100 tubs would go 68 or 67 tons to the hundred tubs; it all depends upon the coal.
 - Q. There are smaller tubs—
- A. (Intg.) On the "Nanaimo" and on the "Theobold" they are small tubs.
- Q. How about the contents of the tubs of the "Comanche," "Ruth," and "Melrose"?
 - A. Much larger tubs.
 - Q. They are larger tubs? A. Yes.
- Q. About how much larger? How much larger would you say those tubs are?
- A. Well, on the "Comanche," the "Melrose" and the "Ruth," if it is Wellington coal, it will go about somewhere in the neighborhood of about 67 to 68 tons to the hundred tubs, but if it is Japanese coal, it will go 6 or 7 tons lighter to the hundred tubs. [1333—1271]

If the tubs are not loaded correctly, the engineer will have to hit them a tremendous blow and break something in order to make them tip. A tub of average coal has to be very near even before it will tip.

I have seen Mr. Chisholm, the Marine Superintendent of the Pacific Mail Steamship Company, observe the coaling of steamers many times. He was seeing how the tubs were loaded and how the weighing was done, and that the tubs were even.

I think I have the book of my weights taken on the barge "Wellington" on December 18, 1912, in the night-time, in connection with the coaling of the steamer "Korea." (Said books are referred to in the evidence here.) On that occasion the tubs were correctly filled. We had plenty of light that night. We have two arc lights, one on each side of the chute, and we have two clusters of lights, one out on the framework showing where the tubs are to be dumped so the engineer can see it, and another cluster down in the hold so that the men and we all can see the tubs. In addition we have about 6 or 7 large coal oil lamps down in the hatch. That is about the extent of lights we have in coaling at night. I always have a lamp of my own. The two lights set on each side of the hatch are on the steamer on both sides of the chute. We have sufficient light to see plainly the extent to which the buckets were filled. As to the custom-house weighers who were there that night on the barge "Wellington," I would say I had Mr. Finnegan from 6 until 12, or a few minutes before 12, and Mr. James Neelan from 1 until 6 in the morning.

Q. Where was Mr. Finnegan that night, Mr. Parks, while he was performing his duties as weigher?

- A. He was around there, [1334—1272] he was around with me a good many times, and he was around at the hatch, and he was all around every where.
- Q. Did he appear to be observing the manner in which these buckets went up?
- A. You bet he did; there couldn't be a finer man than Finnegan, more attentive to his duties than he.
- Q. How many weights, if you recall, did Mr. Finnegan call for and take that night?
- A. Let me see. We had 50 tubs on each number, and we took four weights.
 - Q. Were they coaling rapidly or slowly that night?
- A. Well, I think it was not—I don't think it was very quick; we did 134 tons from 6 to 12.
 - Q. 134 tons from 6 to 12 o'clock? A. Yes.
- Q. How many buckets were weighed during the first part of the night, during the hoisting of that 134 tons. A. 16, four on each.
 - Q. 16 tubs? A. Yes, 4 on each.
- Q. About with what frequency were these tubs weighed?
- A. 1 in 15; that is to say, when I say 1 in 15, it might have been 14 and it might have been, say, 17; but the 4 tubs were sufficient.
- Q. Were they weighed with a fair degree of regularity? A. Oh, yes.
- Q. Now, where were you during that night, Mr. Parks? A. Right close to, very near the tub.
- Q. Do you observe and did you observe the manner in which the buckets were filled? A. I did.

- Q. How were they filled?
- A. They were filled even, average tubs.
- Q. On the morning shift, you say Mr. Neelan was on?
- A. Mr. Neelan was on the morning shift from 1 to 6.
- Q. Will you state what Mr. Neelan was doing during the coaling [1335—1273] of the steamer, during the early morning hours?
- A. He was on the barge, around every place, and part of the time very near to me.
- Q. Was he at any time away from the place where the buckets were being hoisted? A. No.
- Q. Do you remember making any complaint in the presence of Mr. Freund respecting the weights of any of the buckets, or the manner in which any of the buckets were filled?
- A. Well, sometimes I call the Government weigher's attention to—if I think it is a little too heavy, or sometimes—but not very often, very seldom.
- Q. That is, at times, you have occasion to make some complaint or objection?
 - A. Once in a while, certainly.
- Q. Now, how frequently, Mr. Parks, if you recall it, do those occasions arise when you have to make same complaint regarding the manner in which these buckets are being filled? A. Very, very seldom.
- Q. Is it or is it not a frequent occasion for you to make complaints or have cause to make complaints respecting the manner in which the coal is being

laden into the buckets? A. Very seldom.

- Q. Now, are these scales tested by the custom-house weighers before they start in with their work?
 - A. Yes, twice.
 - Q. What is that?
- A. Twice at night; they are tested when they start in; if we start in, say at 6 o'clock, before they weigh they test the scales, balance them.
 - Q. Do they take the platform off?
- A. Certainly, they take the platform off and see if it balances, and if they don't balance, then they take some of the weights—they would [1336—1274] take a couple of the weights and put them on the scales, and see if they are all correct, and then change the weights to the four corners of the scales, so as to see if there is any variation.
- Q. That is, they are all weights that they, themselves, produced, weights that are known to weigh so much? A. Yes.
- Q. Which they frequently use for testing scales, custom-house weights?
- A. They will take the weights on top of the scales; they will take a couple of 500 pounds—the weight of them is 5 pounds. They are 5 pounds in weight, a couple of them, but of course they show 500 pounds on account of the lever, but the weight, itself, is only really 5 pounds.
- Q. Now, I understand these weights were all calculated and were all compared every night by five o'clock?
 - A. Every day the work is made up and we agree

(Testimony of Edward Park.) with the custom-house officers.

- Q. Do you ever take care in any other way than that, to ascertain whether or not the weights contained in your book are correct before they are handed in to the Pacific Mail Steamship Company?
- A. Yes, we check them, we call them out; every weight we call out with the custom-house officer, and then when we make up our calculations, we compare it, and before we leave, we see that everything is correct.
- Q. Then do you hand in your book, or is there anything further that you can do to ascertain the correctness of your figures—do you ascertain whether there is any change made in the custom-house books?
- A. When we get through with the steamer, suppose it is a week, or five or six weeks in which we are coaling, every night I agree with the weigher, and them when the steamer is finished, the books go up to the custom-house and I wait a few hours—if it is a heavy shipment of coal I perhaps wait a day; then I call at the custom-house and ask [1337—1275] if such and such a steamer is O. K.'d, and then they give me the return, which agrees almost every time with our books.
- Q. Then you turn in your books to the Pacific Mail Steamship Company?
- A. Well, I give the steamship company a report every night; then I make out my receipts, then, when the amount is correct.
- Q. Do you have any trouble at all, Mr. Parks, in taking weights, or in taking accurate weights, when

your barge is listing, or when the weather is particularly rough?

A. Well, if it happens to be rough, and she rolls, then we level the scale with a thin board on the side, so as to keep her level, in case it does.

The amount of the donation that I received from the Western Fuel Company at Christmas time was \$20. In answer to the question what I understood that to be for, I would say that I used to write considerable reports of the different barges for the Western Fuel Company every day. Sometimes if we were closing the barges it was considerable work. I would give the company the daily report of the amount of coal from each barge and the total into the steamer.

Direct Examination by Mr. McCUTCHEN.

(The attention of the witness was here directed to his tally-book.)

The figures that are shown me apply to May 3d. The first row of figures represents tub No. 1. I find a difference of 120 pounds between the highest weight registered there and the smallest weight on tub No. 1 On the next tub I find a difference of 170 pounds; on tub No. 3, a difference of 170 pounds. Turning to the next page, I find the weight on tub No. 1 2140 pounds, and, on the same tub, another weight of 2000 pounds, making a difference of 140 pounds; on the second tub a difference of 270 pounds; on tub No. 3 a [1338—1276] difference of 180 pounds; on tub No. 4 a difference of 90 pounds.

Direct Examination by Mr. KNIGHT.

Referring again to my tally-book and to tub No. 2, registering Wellington coal delivered by the "Ruth" to the Steamer "Siberia," July 9, 1911, I find on that tub a weight in one case of 2010 pounds and in another case of 2210 pounds, a difference of 200 pounds.

- Q. Let me ask you one further question: To what extent, while you have been serving as a tally-man and checking clerk on the barges, while the Western Fuel Company was coaling these steamers, did the custom-house weigher attend to the weighing of that coal and the examination as to the contents, the extent to which the buckets were full?
 - A. They did, sir.
- Q. To what extent would you say did they give attention to their duties; were they careful, or, on the other hand, were they not?
- A. Well, nearly all the custom-house officers that I have had during my experience, that have been in the coal-weighing for years, I think now in a minute what an average tub is, and in case the tub is overloaded they will send it up, or they will take lumps off of the tub and throw it on the deck, if they consider it too heavy; they have done that many, many times, thrown coal right off on the deck, where it is piled up, and send it up, and don't weigh it.
- Q. Is it a fact that you have weighed almost all, or, rather, that you have checked or tallied all of the coal that has been from the barges of the Western Fuel Company on the steamers of the Pacific Mail

Steamship Company? A. Yes. [1339—1277]

Cross-examination by Mr. SULLIVAN.

I took the weight of all the coal that is laden upon the ships of and for the Pacific Mail Steamship Company. During the past two or three years, however, when a ship would be coaling from two barges we have had the assistance of tally-men. Before that, we took the Government weight. I, however, take down every weight and have been doing that for 31 years. If there is one barge alongside the ship, I take the weight of every tub that is weighed.

Q. And if there are two barges alongside the ship, if a ship is being loaded from each side, you take the weight of every tub of coal that is weighed?

A. Not on the other side.

Q. Not on the other side?

A. The custom-house officer—only in the last two and a half years or so.

Q. In the last two or three years, haven't the liners of the Pacific Mail Steamship Company been loaded from two barges, as a rule?

A. Well, in a matter only perhaps of one night, or a night and a half.

Q. Isn't it a fact that every liner, at some time or another, before it makes its departure, is laden from two barges, at the same time? A. Sometimes.

Q. Isn't it as a rule?

A. Sometimes they have got two, a couple of nights.

Q. Isn't it a rule to use two barges generally, in loading for a part of the time at least, the Pacific

Mail liners? A. A part of the time.

- Q. At the same time? A. At the same time.
- Q. At the same time? A. Yes.
- Q. As was the case yesterday with the "China"?
- A. Yes.
- Q. When there are two barges alongside of a ship, discharging into a liner, do you take the weight upon one barge only? [1340—1278]
 - A. Well, I can't tally the both of them.
- Q. You, representing the Pacific Mail Steamship Company, simply take the weight on one barge, and depend on the custom-house weigher for the weights of the other barge?
 - A. We did up to about three years ago, very near.
 - Q. Say 21/2 or 3 years? A. Yes.
- Q. During the last two and a half or three years, when there were two barges loading fuel into a liner, and you were engaged upon one barge, who represented the Pacific Mail Company on the other barge?
 - A. We have three tally-men.
 - Q. The Pacific Mail has three tally-men?
 - A. Yes.
 - Q. Who are the tally-men?
 - A. Mr. Sullivan is one, Mr. Hahn is the other.

Redirect Examination by Mr. KNIGHT.

The custom-house weighers weighed the coal that was hoisted from the barge into the Pacific Mail steamers on an even beam, exactly about halfway. The fine coal weighed more than the coarse coal. The scales on the "Nanaimo" and "Comanche" were hanging scales. Sometimes we had to wait an hour

and a half to clear away the coal from the bottom of those scales before they could be used. The reason for that was this:—there is a square bulkhead in the center of the barge, made of wood, the boards being put in at an angle, so that when the shovelers take away those boards, the coal which is left standing straight up in a high pile comes down with a rush and fills up the space. Consequently, we have to wait and get a clear space between the deck and the bottom of the tub before we can take the weights of the tubs. [1341—1279]

Recross-examination by Mr. SULLIVAN.

Q. What has been the custom in weighing tubs? Has it been the custom to just weigh one tub in every fifteen, or a round of four tubs in 60?

A. The custom has been to weigh four tubs at different times; that is to say, they would weigh No. 1 tub, and then wait until two or three tubs went up, and possibly then they might take No. 2, but very seldom; they might go off to No. 4, so as to take an even average, so as not to run them in rotation.

Q. Certain witnesses for the defense here have testified that there was a practice of weighing four tubs at a time? A. Very seldom.



